SUPREME COURT OF THE UNITED STATES.

No. 388.

ORRIN KENDALL, APPELLANT,

vs.

JOSEPH M. DAKE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the Circuit Court of the United States for the northern dissrict of Illinois, held at the United States court-room, in the city of Chicago, in the district aforesaid, before the Honorable Thomas Drummond, district judge of said district, sitting in chancery, and in the absence, pro tempore, of the Honorable David Davis, one of the justices of the Supreme Court of the United States, sole judge of said Circuit Court, on Saturday the thirtieth day of November, in the October term of said court, and the year of our Lord one thousand eight hundred and sixty seven, and of our independence the ninety-second year.

WILLIAM H. BRADLEY, *Clerk.*

In Chancery.

JOSEPH M. DAKE
vs.
ORRIN KENDALL.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

2 Be it remembered, that on this day, to wit, the twenty-second day of May, in the year of our Lord one thousand eight hundred and sixty-five, came said plaintiff, by his solicitors, Messrs. D. C. & I. J. Nichols, and filed in the office of the clerk of the Circuit Court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, his bill of complaint against the said defendant, and also at the same time filed his bond for costs in said entitled cause, which said bill of complaint, with Exhibit A thereto attached, and bond for costs, are in the words and figures following, to wit:

Circuit Court of the United States, 8th circuit, northern district of Illinois.—In chancery.

Bill of Complaint.

To the judges of the Circuit Court of the United States for the northern district of Illinois, sitting in chancery:

Joseph M. Dake, of the city of Chicago, in the State of Illinois, and a resident of said northern district of Illinois, brings his bill against Orren Kendall, who is also a citizen of said State of Illinois, and resides in said northern district of Illinois.

And thereupon your orator shows that the matters in controversy in this suit arose under the laws of the United States, granting
3 and confirming to inventors the exclusive right to their inventions or discoveries,

And your orator further shows unto your honors, that, heretofore, and on or about the 9th day of March, A. D. 1855, James Perry and Elisha Fitzgerald, then of the city, county, and State of New York, being then and now citizens of the United States of America, were the original and first inventors or discoverers of a "certain new

and useful improvement in the process of preparing and raising, or leavening dough or paste for making bread, cakes, pastry, &c.," in certain letters patent of the United States, and in the schedule thereto annexed, hereinafter mentioned, set forth and fully described; that said invention and discovery of said "new and useful improvement in the process of raising and preparing dough," was not, at the time of the application of said James Perry and Elisha Fitzgerald for a patent to be issued as hereinafter mentionen, in public use or on sale with the consent or allowance of the said James Perry or Elisha Fitzgerald, or their assignees; that the said James Perry and Elisha Fitzgerald, being the original and first inventors and discoverers of

4 said "new and useful improvement in the process of raising and preparing dough" before mentioned, and being citizens of the United States, made application in due form of law to the Commissioners of Patents of the United States, for the grant of letters patent for said improvement in the process of raising and preparing dough, and were duly sworn to the specifications for that purpose, and having complied with all the conditions and reqiurements of the acts of Congress in that case provided, they having asssigned their right, title, and interest in said improvement to James Perry, Daniel Fitzgerald, and Horatio Bogart, of said New York, and did obtain and procure to be issued, granted, and delivered to said James Perry, Daniel Fitzgerald, and Horatio Bogert, on or about the said ninth day of March, A. D. 1858, certain letters patent under the seal of the Patent Office of the United States, duly signed by the Secretary of the Interior of the United States, and countersigned and sealed by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, whereby, there was secured to

5 the said James Perry, Daniel Fitzgerald, and Horatio Bogert, their heirs, administrators or assigns, for the term of fourteen years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using and vending to others to be used, the said improvement in the process of raising and preparing dough in the said letters patent mentioned and referred to; that a legal description of said improvement in the process of raising and preparing dough was given in the words of the said James Perry and Elisha Fitzgerald themselves in a certain schedule in writing annexed to said letters patent above-mentioned, when the same were issued, and which schedule made a part of said letters patent, as by said letters patent, and schedule annexed in due form of law, now here in court, ready to be produced, reference being thereto had, and numbered 19,610, for greater certainty, will more fully and at large appear; a true and certified copy of which said letters patent and schedule are hereto annexed and marked Exhibit "A," and which your orator prays may be made a part of this his bill of complaint.

6 And your orator further shows unto your honors, that Horatio Bogert, of the city, county, and State of New York, after the issuing of said letters patent, as aforesaid, and on or about the 20th day of October, A. D. 1859, obtained from the said James Perry,

Daniel Fitzgerald, and Horatio Bogart, by assignment, the sole and exclusive right to said letters patent and invention, or discovery, for and in the territory hereinafter-mentioned, and in and for other territory in which your orator is not interested, by assignment from said James Perry, Daniel Fitzgerald, Horatio Bogart, and Willard Parker; and that afterwards, to wit, on or about the 14th day of February, A. D. 1861, the said Willard Parker did obtain, by assignment bearing date the day and year last aforesaid, from the said Horatio Bogart, the sole and exclusive right to the said letters patent and invention, or discovery, for and in said territory hereinafter-mentioned; and that afterwards, to wit, on or about the seventeenth day of March, A. D. 1864, John Pendleton, of the said city, county, and State of New York, did obtain, by assignment bearing date the
7 day and year aforesaid, from the said Willard Parker, the sole and exclusive right to the said letters patent and invention, or discovery, for and in the county of Cook and State of Illinois; and that afterwards, to wit, on or about the 21st day of April, A. D. 1865, Charles L. Woodman, of the city of Chicago, in the county of Cook and State of Illinois, did obtain, by assignment bearing date the day and year last aforesaid, from said John Pendleton, the sole and exclusive right to the said letters patent and invention, or discovery, for and in the said county of Cook and State of Illinois; and that your orator afterwards, to wit, on the same day and year last aforesaid, did obtain, by assignment from the said Charles L. Woodman, the sole and exclusive right to the said letters patent and invention, or discovery, for and in the said county of Cook and State of Illinois; and your orator avers, that under and by virtue of said letters pattent, issued and delivered to said James Perry, Daniel Fitzgerald, and Horatio Bogart, as aforesaid, and by virtue of said assignment to your orator, as aforesaid, your orator became vested with the full and exclusive right and liberty of using, and of vending to others
8 to be used, said new and useful improvement in the process of raising and preparing dough in and for the county of Cook and State of Illinois, aforesaid.

And your orator further shows unto your honors, that since the granting of said letters patent to the said James Perry, Daniel Fitzgerald, and Horatio Bogert, the said James Perry, Daniel Fitzgerald, and Horatio Bogert, and those claiming under them, by assignment, license, or otherwise, have made, in different parts of the country, extensive use of said new and useful improvement in the process of raising and preparing dough in said letters patent and schedule thereto annexed, described; and that said improvement in the process of raising and preparing dough has been extensively used in the department of art to which it belongs, to the great benefit of the public, whereby your orator, as assignee of all the rights and privileges conferred by said letters pattent in and for the county of Cook and State of Illinois, might, and would have derived to himself greater profit than he has been able to realize, but for the continued and illegal interference with the just exercise of
9 your orator's rights, as assignee, as aforesaid, hereinafter-

and useful improvement in the process of preparing and raising, or leavening dough or paste for making bread, cakes, pastry, &c.," in certain letters patent of the United States, and in the schedule thereto annexed, hereinafter mentioned, set forth and fully described; that said invention and discovery of said "new and useful improvement in the process of raising and preparing dough," was not, at the time of the application of said James Perry and Elisha Fitzgerald for a patent to be issued as hereinafter mentionen, in public use or on sale with the consent or allowance of the said James Perry or Elisha Fitzgerald, or their assignees; that the said James Perry and Elisha Fitzgerald, being the original and first inventors and discoverers of

4 said "new and useful improvement in the process of raising and preparing dough" before mentioned, and being citizens of the United States, made application in due form of law to the Commissioners of Patents of the United States, for the grant of letters patent for said improvement in the process of raising and preparing dough, and were duly sworn to the specifications for that purpose, and having complied with all the conditions and requirements of the acts of Congress in that case provided, they having asssigned their right, title, and interest in said improvement to James Perry, Daniel Fitzgerald, and Horatio Bogart, of said New York, and did obtain and procure to be issued, granted, and delivered to said James Perry, Daniel Fitzgerald, and Horatio Bogert, on or about the said ninth day of March, A. D. 1858, certain letters patent under the seal of the Patent Office of the United States, duly signed by the Secretary of the Interior of the United States, and countersigned and sealed by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, whereby, there was secured to

5 the said James Perry, Daniel Fitzgerald, and Horatio Bogert, their heirs, administrators or assigns, for the term of fourteen years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using and vending to others to be used, the said improvement in the process of raising and preparing dough in the said letters patent mentioned and referred to; that a legal description of said improvement in the process of raising and preparing dough was given in the words of the said James Perry and Elisha Fitzgerald themselves in a certain schedule in writing annexed to said letters patent above-mentioned, when the same were issued, and which schedule made a part of said letters patent, as by said letters patent, and schedule annexed in due form of law, now here in court, ready to be produced, reference being thereto had, and numbered 19,610, for greater certainty, will more fully and at large appear; a true and certified copy of which said letters patent and schedule are hereto annexed and marked Exhibit "A," and which your orator prays may be made a part of this his bill of complaint.

6 And your orator further shows unto your honors, that Horatio Bogert, of the city, county, and State of New York, after the issuing of said letters patent, as aforesaid, and on or about the 20th day of October, A. D. 1859, obtained from the said James Perry,

Daniel Fitzgerald, and Horatio Bogart, by assignment, the sole and exclusive right to said letters patent and invention, or discovery, for and in the territory hereinafter-mentioned, and in and for other territory in which your orator is not interested, by assignment from said James Perry, Daniel Fitzgerald, Horatio Bogart, and Willard Parker; and that afterwards, to wit, on or about the 14th day of February, A. D. 1861, the said Willard Parker did obtain, by assignment bearing date the day and year last aforesaid, from the said Horatio Bogart, the sole and exclusive right to the said letters patent and invention, or discovery, for and in said territory hereinafter-mentioned; and that afterwards, to wit, on or about the seventeenth day of March, A. D. 1864, John Pendleton, of the said city, county, and
7 State of New York, did obtain, by assignment bearing date the day and year aforesaid, from the said Willard Parker, the sole and exclusive right to the said letters patent and invention, or discovery, for and in the county of Cook and State of Illinois; and that afterwards, to wit, on or about the 21st day of April, A. D. 1865, Charles L. Woodman, of the city of Chicago, in the county of Cook and State of Illinois, did obtain, by assignment bearing date the day and year last aforesaid, from said John Pendleton, the sole and exclusive right to the said letters patent and invention, or discovery, for and in the said county of Cook and State of Illinois; and that your orator afterwards, to wit, on the same day and year last aforesaid, did obtain, by assignment from the said Charles L. Woodman, the sole and exclusive right to the said letters patent and invention, or discovery, for and in the said county of Cook and State of Illinois; and your orator avers, that under and by virtue of said letters pattent, issued and delivered to said James Perry, Daniel Fitzgerald, and Horatio Bogart, as aforesaid, and by virtue of said assignment to your orator, as aforesaid, your orator became vested with the full and
8 exclusive right and liberty of using, and of vending to others to be used, said new and useful improvement in the process of raising and preparing dough in and for the county of Cook and State of Illinois, aforesaid.

And your orator further shows unto your honors, that since the granting of said letters patent to the said James Perry, Daniel Fitzgerald, and Horatio Bogert, the said James Perry, Daniel Fitzgerald, and Horatio Bogert, and those claiming under them, by assignment, license, or otherwise, have made, in different parts of the country, extensive use of said new and useful improvement in the process of raising and preparing dough in said letters patent and schedule thereto annexed, described; and that said improvement in the process of raising and preparing dough has been extensively used in the department of art to which it belongs, to the great benefit of the public, whereby your orator, as assignee of all the rights and privileges conferred by said letters pattent in and for the county of Cook and State of Illinois, might, and would have derived to himself greater profit than he has been able to realize, but for the
9 continued and illegal interference with the just exercise of your orator's rights, as assignee, as aforesaid, hereinafter-

mentioned; and that your orator is still, as such assignee, entitled to the exclusive possession and enjoyment of said improvement and discovery in and for the county of Cook and State of Illinois, aforesaid, and the same is of great value.

And your orator further shows unto your honors, that the validity of said patent, and the exclusive right of the said James Perry, Daniel Fitzgerald, and Horatio Bogert, and their assigns, to the privilege and monopoly of said invention and discovery have become fully settled and established by the long and extensive use of the same by said James Perry, Daniel Fitzgerald, and Horatio Bogert, and the acquiescence of the public therein, by the purchase and use of the same in many different parts of the country, and by the acceptance of grants and licenses under said patentees, so that the title of said patentees and their assigns to the said improvement in the process of raising and preparing dough, secured to said James Perry, Daniel Fitz-
10 gerald, and Horatio Bogert and their assigns, by the said letters patent, and your orator's exclusive right therein, as assignee, as aforesaid, in and for the said county of Cook and State of Illinois, remain without reasonable question.

And your orator further show unto your honors, that since the 14th day of December, 1864, and since your orator obtained the sole and exclusive right to said letters patent and invention, or discovery, by assignment as aforesaid, on the said 21st day of April, A. D. 1865, in and for the said county of Cook and State of Illinois; and from thence hitherto the said defendant herein, Orren Kendall, of the said northern district of Illinois, well-knowing the facts aforesaid, and that your orator as such assignee, was vested with the sole and exclusive right of using, and vending to others to be used, in the said county of Cook, said improvement in the process of raising and preparing dough, without any legal assignment, grant, or license therefor, and in violation and defiance of your orator's patent right under said assignment as aforesaid, has continually used, and does
11 still continue to use, in the said county of Cook, said new and useful improvement in the process of raising and preparing dough, and that the said defendant, Orren Kendall, has from the date of said assignment to your orator in violation and defiance of your orator's rights, under said letters patent, acquired by assignment as aforesaid, continually used the same process in preparing and raising dough, and preparing the same for baking in the county aforesaid, as that embraced in the invention and discovery contained in said letters patent and assigned to your orator as aforesaid; and that the said defendant is now using the same at will, and causing the same to be used in said county, and persists in so doing, and refuses to desist, though warned and requested so to do, whereby great injury has resulted to your orator, and gains and profits to a large sum of money have accrued to the said defendant from the appropriation and use of your orator's exclusive rights, and from using said improvement in the process of raising and preparing dough for baking, in the county aforesaid, which your orator shows has been of great value to the said defendant, the full amount of

12 which said gains and profits and value thus unlawfully derived is unknown to your orator, but which your orator shows, in equity, belong to your orator, and should be accounted for by said defendant and paid over to your orator as the avails of his exclusive rights, under said letters patent, acquired by assignment as aforesaid, and profits, gains, and value which your orator would have derived from his said exclusive rights under said letters patent in and for said county of Cook, but for the unlawful acts of the said defendant; and your orator well hoped that the said defendant would have desisted from the said illegal invasion of the exclusive rights of your orator, under said letters patent in and for said county of Cook, acquired by assignment as aforesaid, and would have accounted for and paid over to your orator the avails and value of his said exclusive rights under said letters patent, and the gains, profit, and value thus unlawfully derived.

But now, so it is, may it please your honors, that the said defendant, combining and confederating together, to, and with divers other persons, as yet to your orator unknown, but whose names,
13 when discovered, your orator prays may be herein inserted, as defendants, with proper and apt words to charge them how to injure and oppress your orator, wholly refuse to desist from his said unlawful invasion of your orator's said exclusive rights under said letters patent acquired by assignment as aforesaid, or to account for and pay over to your orator the said unlawful derived gains, profits, and value aforesaid and for excuse therefor the said confederates sometimes give out and pretend that said invention and discovery was not new and useful, and that said James Perry and Elisha Fitzgerald were not the original and first inventors and discoverers of said new and useful improvement in the process of raising and preparing dough so patented to said James Perry, Daniel Fitzgerald, and Horatio Bogert, as aforesaid, and sometimes the said confederates give out and pretended that the said defendant has lawful right by assignment, grant, or license, from the said patentees to use the same.

Whereas your orator expressly charges the contrary of all such pretences to be true.

14 All such actings and doings of the said defendant and his confederates are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator.

In tender consideration whereof, and for as much as your orator is remidiless in the premises at and by the strict rules of the common law, and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable. To the end, therefore, that the said defendant may show, if the said defendant can, why your orator should not have the relief hereby prayed, and may (but not upon oath, the necessity of an answer upon oath being hereby expressly waived) according to the best and utmost of said defendant's knowledge, information, and remembrance, or belief, full, true, direct, and perfect answer make to all and singular the matters and charges aforesaid, and that as fully as if the same were

here again repeated, and the said defendant thereto interrogated paragraph by paragraph numerically; and that the said defendant may be compelled by the decree of this honorable court to
15 account for and pay over to your orator such gains and profits as have accrued or arisen to the said defendant from the use, application, or invasion of said patent rights secured to your orator by assignment, as aforesaid, and the value thereof to the said defendant, being the profits and avails which your orator would have derived from the application and use of said new and useful improvement in the process of raising and preparing dough, but for the unlawful acts of the said defendant, and the value thereof to the said defendant; and that the said defendant, and the attorneys, agents, servants, contractors, and workmen of the said defendant, may be personally enjoined and restrained by the decree of this honorable court from using, or causing to be used, said improvement in the process of raising and preparing dough for baking in said letters patent mentioned and described; and from using or causing to be used, any process of preparing dough for baking, substantially like and upon the plan and principle of said improvement in said letters patent described, or for such other or further relief, or either, or both, as your orator's case may require, and may be agreeable to equity and good conscience.

16 May it please your honors, the premises considered, to grant unto your orator the people's most gracious writ of injunction, issuing out of and under the seal of the court, conforming and restraining the said defendent as in the prayer of this your orator's bill set forth, until the further order of this honorable court.

May it please your honors also to grant unto your orator the people's most gracious writ of subpœna, issuing out of, and under the seal of this court, directed to the said defendant above named, thereby commanding the said defendant by a certain day and under a certain penalty, to be and appear in this honorable court to answer this your orator's bill of complaint, and to stand to, and abide by, and perform such decree as the court shall make in the premises, and shall be agreeable equity and good conscience.

And your orator will ever pray, &c.

JOSEPH M. DAKE,

D. C. & J. J. NICHOLES,
Sol't'rs and of Counsel for Compl't.

17 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

On this 22nd day of May, 1865, before me, personally appeared the above-named Joseph M. Dake, and made oath that he has heard read the above bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters he believes it to be true.

E. A. DRUMMOND,
U. S. Com.

Exhibit "A."

THE UNITED STATES PATENT OFFICE:

To all persons to whom these presents shall come, greeting,

This is to certify, that the annexed is a true copy from the records of this office of the letters patent granted James Perry, Elisha
18 Fitzgerald, and Horatio Bogart, (assignees of Perry & Fitzgerald,) March 9th, 1858, No. 19,610.

In testimony whereof, I, D. P. Holloway, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this ninth day of May, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

D. P. HOLLOWAY.

No. 19,610.

THE UNITED STATES OF AMERICA:

To all to whom these letters patent shall come:

Whereas, James Perry and Elisha Fitzgerald, of New York, N. Y., have alleged that they have invented a new and useful improvement in raising dough, (they having assigned their right, title, and interest in said improvement to James Perry, Daniel Fitzgerald, and Horatio Bogart, of said New York,) which, they state, has not been known or used before their application, have made oath that they are citizens of the United States; that they do verily believe that they are the original and first inventors or discoverers of the said
19 improvement, and that the same hath not, to the best of their knowledge and belief, been previously known or used; have paid into the treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose.

These are, therefore, to grant, according to law, to the said James Perry, Daniel Fitzgerald, and Horatio Bogart, their heirs, administrators, or assigns, for the term of fourteen years from the ninth day of March, one thousand eight hundred and fifty-eight, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said James Perry and Elisha Fitzgerald in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

20 Given under my hand, at the city of Washington, this ninth day of March, in the year of our Lord one thousand eight

hundred and fifty-eight, and of the independence of the United States of America the eighty-second.

[L. S.] JACOB THOMPSON,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
J. HOLT,
Commsssioner of Patents.

The schedule referred to in these letters patent, and making part of the same.

Be it known, that we, James Perry and Elisha Fitzgerald, both o the city, county, and State of New York, have invented a certain new and useful improvement in the process of preparing and raising or levening dough or paste for making bread, cakes, pastry, &c.; and we do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawings making part of this specification, in which fig. 1 is a plan of the machine employed in the working of the process.

21 Fig. 2 a vertical section thereof, and

Fig. 3 a separate view of the central shaft and blades or arms.

The same letters indicate like parts in all the figures.

The object of our invention is to prepare dough or paste in such a way that in the process of preparing and baking it will be raised or levened without the necessity of mixing therewith chemical agents, the presence or consequence of which are deleterious. And to this end our said invention consists in mixing the dough in a close vessel under gaseous pressure. And our said invention also consists in discharging the dough or paste which has been mixed under gaseous pressure from the vessel in which it was so mixed by the pressure of the gas, so that it can be taken in quantities of the required size directly from the discharge to the oven or other cooking apparatus.

In the accompanying drawing, (a) represents a vertical vessel with a closed bottom, (b,) provided with a discharge pipe (c) having a cock or valve. The said vessel is made in two parts, the upper part (d) being connected with the lower part by a suitable

22 packed joint, or in any other suitable manner to make it air tight. The upper part is provided with a large aperture covered with a cap, (e,) through which the charge can be introduced. Within this vessel there is a vertical rotating shaft (g) turning on a pivot at bottom, and formed with a journal at top that passes through a stuffing box (h) in the head or top, (d,) that it may carry a pully (i) at its upper end and outside of the vessel, by which motion may be imparted.

Radial blades or arms (j) project from different parts of the length of the shaft, and of such length as just to clear the surface of the vessel, (a.) The face of the blades are from the shaft outward and oblique to the plane of motion, so that their

under surfaces shall act on the dough to gradually force it downward toward the bottom of the vessel as the shaft rotates, and they are corresponding blades or arms (k) projecting inward from the inner surface of the vessel, (a,) and extending to within a short distance of the surface of the shaft, and so located that the blades on the shaft pass between them. The vessel is provided with a receiving cock (l) and an exhaust cock (m) at the top, as seen in fig. 1,
23 one of which is to be connected by suitable pipes with a gasometer or other apparatus containing carbonic acid gas under high pressure, which said apparatus may be such as is used for soda water, and therefore does not require to be described or represented.

The other cock (m) is to be connected with any suitable apparatus for exhausting the vessel with air.

For working our said process, we take off the cap (e) and put into the vessel (a) the required quantity of flour and the previously mixed salt and water, and then put on the cap and exhaust the vessel of atmospheric air, and then open the connection with the gasometer, that the gas may be forced in under heavy pressure, and then put the shaft in motion, that the blades on the shaft and vessel may thoroughly mix the ingredients. The continued rotation of the shaft causes the blades to thoroughly mix the flour with the water, and to work the dough which thus becomes charged with gas under heavy pressure. When the operator is under the impression that the dough has been sufficiently worked and charged with gas, he has
24 only to open the cock or valve of the discharge pipe (c) and the pressure inside will force out some of the dough for inspection. If it has not been sufficiently worked, the cock or valve is to be reclosed and the working continued; but if sufficiently worked, as the dough is forced out of the discharge pipe by the pressure inside, the operator cuts it off in pieces of the required size to form loaves, cakes, &c., which are immediately put into the oven to bake, thereby avoiding the necessity of handling the dough after it is relieved of the surrounding pressure, which handling would cause the gas to be discharged without producing the required leavening effect. As the dough is thus mixed and worked it becomes thoroughly charged with gas, and as soon as it is discharged from the vessel (a) and its exterior surface thereby relieved of the pressure under which it was mixed, the enclosed compressed gas expands, and in expanding swells it, (the dough,) and continues to swell it under the action of the heat in the oven during the process of baking, thereby leavening
35 the bread thoroughly raised or leavened. It is obvious from the foregoing that any desired degree of lightness may be imparted to the dough by regulating the degree of pressure under which it is mixed. And although we have stated that a soda water apparatus may be used for containing and supplying the carbonic acid gas as a means of producing the required pressure in the process of mixing the dough, and we have also described a construction of apparatus for mixing the dough under pressure, we do not wish to be understood a limiting our invention to the use of such special

means, as it will be obvious that any other apparatus for supplying the gas and for mixing dough or paste under gaseous pressure in a closed vessel may be substituted. And although we have found it more convenient to introduce the water and gas separately, it will be obvious that the water previously charged with carbonic acid gas may be introduced instead, but in that case care should be taken to exhaust the atmospheric air from the vessel (a) and charge it with carbonic acid gas under sufficient pressure to prevent the escape of gas from the charged water, as it is being forced into and
26 mixed with the flour, &c., in the vessel. And it will also be obvious that instead of carbonic acid gas, any other gas which is not deleterious may be substituted, although we have given the preference to carbonic acid gas, having found it to produce the best results. What we claim as our invention, and desire to secure by letters patent, is the process of preparing dough or paste for making bread, cakes, or other farinaceous articles of food, by mixing the materials with gas under pressure in a closed vessel, substantially as described, as a means of leavening or raising the same as set forth. And we also claim discharging the dough, as aforesaid, from the vessel by the gaseous pressure, as it is required, substantially as and for the purpose specified.

JAMES PERRY.
ELISHA FITZGERALD.

Witnesses:
WM. H. BISHOP.
JOEL B. WILSON.

27 Endorsed: Filed May 22, 1865. Wm. H. Bradley, clerk.

(Here follows diagram marked page 27.)

28 Circuit Court, May term, A. D. 1865.

Bond for costs.

JOSEPH M. DAKE
vs.
ORRIN KENDALL. } In chancery.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

We do hereby enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against our property for any costs taxed against him.

Dated this M'y 22d, A. D. 1865.

D. C. & I. J. NICHOLS.

Endorsed: Filed May 22d, A. D. 1865. Wm. H. Bradley, clerk.

29 And afterwards, to wit, the twenty-second day of May, A. D. 1865, was issued out of the clerk's office of said court a subpœna in said entitled cause, which said subpœna, together with the memorandum thereto attached, and notice for injuunction, and the return of the marshal thereon, are in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to Orren Kendall, greeting:

We command you and every of you, that you appear before our judges of our Circuit Court of the United States of America for the Northern District of Illinois, at Chicago, in said district, on the first Monday in the month of July next, to answer the bill of complaint of Joseph M. Dake, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgement and decree as shall then or thereafter be made, upon pain of judgement being pronounced against you by default.

To the marshal of the Northern District of Illinois, to execute.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this twenty-second day of May, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the eighty-ninth.

WM. H. BRADLEY, *Clerk.*

[50-ct. stamp.]

30 *Memorandum.*

The above-named defendant is notified that unless he shall enter his appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against him as confessed, and a decree entered accordingly.

WM. H. BRADDEY, *Clerk.*

In chancery, May term, A. D. 1865.

Motion for injunction.

JOSEPH M. DAKE }
vs.
ORRIN KENDALL. }

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To ORRIN KENDALL, Esq'r:

Take notice that complainant will move this honoroble court on the 29th day of May, instant, at the going in of the court on that

day, or as soon thereafter as counsel can be heard, that a writ of injunction issue against the within-named defendant, Orrin Kendall, in accordance with the prayer of the bill herein.

Yours, &c.,

D. C. & I. J. NICHOLES,
Comp't's Solicitors.

Dated this 22d day of May, A. D. 1865.

31 NORTHERN DISTRICT OF ILLINOIS, *ss:*

Know all men by these presents, that I have appointed, and by these presents do appoint, Augustus B. Cotes my true and lawful deputy to execute the annexed writ, and to serve the notice thereon endorsed, (Joseph M. Dake *vs.* Orren Kendall,) and to make true return thereof according to law.

[SEAL] J. R. JONES,
United States Marshal of the Northern District of Illinois.

Service.

I have served the annexed subpœna and the notice of motion for an injunction thereon endorsed, by delivering a true copy thereof to Orrin Kendall therein named, on this 23d day of May, A. D. 1865.

J. R. JONES,
United States Marshal of the Northern District of Illinois.
By A. B. COTES,
Special Deputy.

Oath of service.

Augustus B. Cotes, being first duly sworn, deposes and says: That he served the annexed writ, and the notice of motion thereon endorsed, as stated in the foregoing return.

Sworn to before me this 23d day of May, A. D. 1865.

PHILIP A. HOGUE,
U. S. Com. N. D. Ill.

[5 cent int. rev. stamp cancelled.]

32 And on this day, to wit, the 29th day of May, A. D. 1865, came the said defendant and filed in the office of the clerk of said court his answer to the bill of complaint herein, which answer of said defendant is in the words and figures following, to wit:

In equity.

Before the hon. the justices of the Circuit Court of the United States within and for the northern district of Illinois, sitting in equity.

Defendant's answer.

The answer of Orrin Kendall to the bill of complaint of Joseph W. Dake, complainant, against said defendant:

This defendant, now and at all times hereafter, saving reserving unto himself all and all manner of benefit, advantage, and exception which can or may be had or taken to the manifold errors, uncertainties, and insufficiencies in the said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering, says: He admits that on or about the 9th day of March, 1858, there was issued, granted, and delivered to said James Perry, Daniel Fitzgerald, and Horatio Bogart the certain letters patent in the bill of complaint alleged, under the seal of the Patent Office of the United States, duly signed by the Secretary of the Interior of the United States, and countersigned and sealed by the Commissioner of Patents of the United States, whereby there was secured
33 to the said patentees, their heirs, administrators, or assigns, for the term of fourteen years from and after said date, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement in the process of raising and preparing dough in the said letters patent mentioned, and more particularly set forth in the schedule attached to said letters patent; and this defendant admits that the alleged copy of said letters patent and of said schedule attached to the said bill of complaint is accurate.

And this defendant, further answering, admits that on or about the 17th day of March, A. D. 1864, said John Pendleton, named in said bill of complaint, obtained by assignment of that date from Willard Parker, who was then the owner thereof, the sole and exclusive right to the said letters patent and invention or discovery for and in the county of Cook and State of Illinois; and this defendant admits that the chain of title of the said John Pendleton thereto is correctly set forth in said bill of complaint.

And this defendant, further consenting, says that at the date of the aforesaid assignment to said John Pendleton, and for nearly a year subsequently, the practical value of said patent right had not been ascertained; that many and expensive experiments had been made in the use of it, which had proved failures; that in Cincinnati, in the State of Ohio, Mess. A. B. Lutea & Co. had been attempting
34 to make use of it, and had procured expensive machinery, according to the aforesaid directions annexed to said letters patent, and had otherwise expended large sums of money in order to test it, and, if possible, to make it a success, but they were unable to do anything with it and abandoned the use of it, and offered their aforesaid machinery for sale; that Mess. Alvord & Co., of St. Louis, made similar efforts, with the same results; that in Boston and New York similar efforts had been made, which had likwise resulted unfavorably; and although partial success had been attained in some other places on a comparatively small scale, yet it remained to be

demonstrated that the alleged improvement was economical and useful.

And this defendant states, that most of the practical bakers in this city of Chicago and throughout the country were of the opinion that it was worthless; that in the early summer of 1864 he received two letters from practical bakers, one in the city of St. Louis, and the other in the city of New York, both men of skill and experience in their business, warning him against said alleged improvement, and informing him that they had given it a thorough examination and had watched its practical workings, and considered it a failure, and one of them called it a "humbug of humbugs."

And this defendant, further answering, states that the specifications accompanying said letters patent are insufficient, and that additions thereto are necessary to the practical application of said improvement.

35 And this defendant states, that in the spring and summer of 1864 said Pendleton was familiar with the many failures which had been made in the use of said patent; that he had sold the right to the use of said improvement to the aforesaid A. B. Lutea & Co. and to the said Alvord & Co., and then held claims against them for the payment of the purchase price, which he has since attempted to collect by process of law, and he understood that the value of said improvement was still to be ascertained by a successful experiment. He therefore came to said city of Chicago in the spring or early summer of 1864, with the double purpose of selling the right to said improvement in said Cook county, and of finding in the purchaser a man competent to make said improvement a success.

And this defendant states that upon his arrival in said Chicago, said Pendleton offered said improvement to several prominent bakers, including the Charles S. Woodman named, in the bill of complaint; but all of said bakers, upon investigation, refused to have anything to do with it, upon the alleged ground that it was of no value.

And this defendant states that he has been a practical baker for thirty years last past, and for about twelve years in the city of Chicago, and by his long experience has acquired a thorough knowledge of the business; and he says that said Pendleton was referred to him as a person competent to develop the said improvement and to

36 ascertain its value, and that said Pendleton applied to this defendant to buy the right to the use of said improvement in said Cook county, and to put the same in practice; but this defendant was unwilling to buy the same, absolutely fearing that he would be unable to make it successful.

Said Pendleton then proposed to this defendant to buy the same, upon the condition, and at the price, and upon the terms hereinafter set forth; and as an inducement to this defendant to comply with said proposal, promised to procure for this defendant, immediately upon the completion of the proposed contract, the necessary machinery upon reasonable terms, and to assist this defendant in putting the same in running order and in practical operation.

And this defendant states, that relying on said promise of said Pendleton, on or about June 14th, A. D. 1864, he agreed, in writing, with said Pendleton, as follows:

"It is agreed between John Pendleton, of the City and State of New York, and Orrin Kendall, of the City of Chicago, Cook county, and State of Illinois, that whereas the said John Pendleton is the owner, by assignment, of the right of Cook county, in the State of Illinois, to all the privileges conferred by letters patent, issued March 9th, 1858, to James Perry, Daniel Fitzgerald, and Horatio Bogart, of the city of New York, 'for certain new and useful improvements in the process of raising and preparing dough,' which
37 right, so conferred by said letters patent, in the county of Cook, and State of Illinois, the said Orrin Kendall proposes to purchase of said Pendleton at the sum of sixty-five hundred dollars; that in consideration of five hundred dollars paid by said Kendall to said Pendleton, the said Kendall shall have the right, the priveleges conferred by said patent, and the process therein described, within the whole county of Cook, in the State of Illinois, for the period of six months from June 14th, 1864, at the end of which period he shall have the privelege of buying the perpetual right conferred by said letters patent at the additional sum of six thousand dollars, payable in six equal instalments of six, twelve, eighteen, twenty-four, thirty, and thirty-six months from December 14th, 1864, and bearing interest at the rate of seven per cent., payable annually. If at the end of said period said Kendall declines to make the full purchase of said rights for Cook county as aforesaid, the said Pendleton retains the said five hundred dollars, and is released from this obligation. But if said Kendall elects to purchase said right, the said Pendleton shall make a good and sufficient transfer of all the franchises and privileges conferred by said letters patent, within and for Cook county, in the State of Illinois, to said Orrin Kendall and his assigns, and said Kendall shall give his six notes for said instalments with interest, as aforesaid. In the event of said Kendall electing to purchase the remainder of the patent right from Deccember 14th, 1864, the
38 interest then accrued on the six thousand dollars will be due and payable at that time."

(Signed) "JNO. PENDLETON.
"O. KENDALL."

"Attest:
"JOHN BOND.
"R. P. COATS."

[Internal revenue stamp, 5 cts.]

As by said contract duly signed and delivered by said John Pendleton and this defendant, and duly stamped with an internal revenue stamp of the denomination of five cents, and now in the possession of this defendant, ready to be produced as this court may direct, will, on reference, more fully appear.

And this defendant states that he paid the five hundred dollars to said Pendleton, required by said contract, for the use of said improve-

demonstrated that the alleged improvement was economical and useful.

And this defendant states, that most of the practical bakers in this city of Chicago and throughout the country were of the opinion that it was worthless; that in the early summer of 1864 he received two letters from practical bakers, one in the city of St. Louis, and the other in the city of New York, both men of skill and experience in their business, warning him against said alleged improvement, and informing him that they had given it a thorough examination and had watched its practical workings, and considered it a failure, and one of them called it a "humbug of humbugs."

And this defendant, further answering, states that the specifications accompanying said letters patent are insufficient, and that additions thereto are necessary to the practical application of said improvement.

35 And this defendant states, that in the spring and summer of 1864 said Pendleton was familiar with the many failures which had been made in the use of said patent; that he had sold the right to the use of said improvement to the aforesaid A. B. Lutea & Co. and to the said Alvord & Co., and then held claims against them for the payment of the purchase price, which he has since attempted to collect by process of law, and he understood that the value of said improvement was still to be ascertained by a successful experiment. He therefore came to said city of Chicago in the spring or early summer of 1864, with the double purpose of selling the right to said improvement in said Cook county, and of finding in the purchaser a man competent to make said improvement a success.

And this defendant states that upon his arrival in said Chicago, said Pendleton offered said improvement to several prominent bakers, including the Charles S. Woodman named, in the bill of complaint; but all of said bakers, upon investigation, refused to have anything to do with it, upon the alleged ground that it was of no value.

And this defendant states that he has been a practical baker for thirty years last past, and for about twelve years in the city of Chicago, and by his long experience has acquired a thorough knowledge of the business; and he says that said Pendleton was referred to him as a person competent to develop the said improvement and to

36 ascertain its value, and that said Pendleton applied to this defendant to buy the right to the use of said improvement in said Cook county, and to put the same in practice; but this defendant was unwilling to buy the same, absolutely fearing that he would be unable to make it successful.

Said Pendleton then proposed to this defendant to buy the same, upon the condition, and at the price, and upon the terms hereinafter set forth; and as an inducement to this defendant to comply with said proposal, promised to procure for this defendant, immediately upon the completion of the proposed contract, the necessary machinery upon reasonable terms, and to assist this defendant in putting the same in running order and in practical operation.

And this defendant states, that relying on said promise of said Pendleton, on or about June 14th, A. D. 1864, he agreed, in writing, with said Pendleton, as follows:

"It is agreed between John Pendleton, of the City and State of New York, and Orrin Kendall, of the City of Chicago, Cook county, and State of Illinois, that whereas the said John Pendleton is the owner, by assignment, of the right of Cook county, in the State of Illinois, to all the privileges conferred by letters patent, issued March 9th, 1858, to James Perry, Daniel Fitzgerald, and Horatio Bogart, of the city of New York, 'for certain new and useful improvements in the process of raising and preparing dough,' which
37 right, so conferred by said letters patent, in the county of Cook, and State of Illinois, the said Orrin Kendall proposes to purchase of said Pendleton at the sum of sixty-five hundred dollars; that in consideration of five hundred dollars paid by said Kendall to said Pendleton, the said Kendall shall have the right, the priveleges conferred by said patent, and the process therein described, within the whole county of Cook, in the State of Illinois, for the period of six months from June 14th, 1864, at the end of which period he shall have the privelege of buying the perpetual right conferred by said letters patent at the additional sum of six thousand dollars, payable in six equal instalments of six, twelve, eighteen, twenty-four, thirty, and thirty-six months from December 14th, 1864, and bearing interest at the rate of seven per cent., payable annually. If at the end of said period said Kendall declines to make the full purchase of said rights for Cook county as aforesaid, the said Pendleton retains the said five hundred dollars, and is released from this obligation. But if said Kendall elects to purchase said right, the said Pendleton shall make a good and sufficient transfer of all the franchises and privileges conferred by said letters patent, within and for Cook county, in the State of Illinois, to said Orrin Kendall and his assigns, and said Kendall shall give his six notes for said instalments with interest, as aforesaid. In the event of said Kendall electing to purchase the remainder of the patent right from December 14th, 1864, the
38 interest then accrued on the six thousand dollars will be due and payable at that time."

(Signed) "JNO. PENDLETON.
"O. KENDALL."

"Attest:
"JOHN BOND.
"R. P. COATS."

[Internal revenue stamp, 5 cts.]

As by said contract duly signed and delivered by said John Pendleton and this defendant, and duly stamped with an internal revenue stamp of the denomination of five cents, and now in the possession of this defendant, ready to be produced as this court may direct, will, on reference, more fully appear.

And this defendant states that he paid the five hundred dollars to said Pendleton, required by said contract, for the use of said improve-

ment for the six months ending December 14th, 1854, by executing and delivering to said Pendleton this defendant note for $500, and that said Pendleton received said note in full of said payment, and in lieu of cash.

And this defendant states that immediately upon the completion of said contract, as aforesaid, he urged upon said Pendleton promptness in securing the necessary machinery, as he had promised, and in rendering his assistance in putting the same in operation; but the said Pendleton was unable to procure said machinery for a long time, and it only arrived in Chicago the last of July or early in August, 1864. When it arrived it was imperfect and in very bad order, and this defendant was compelled to send it to the foundry to be altered
39 and repaired; that the delay thus occasioned prevented this defendant from commencing his efforts to manufacture until sometime in September, A. D. 1864, so that one-half the time given this defendant to form a judgment in the premises was lost to him by the default of said Pendleton.

And this defendant states that said Pendleton, in violation of his aforesaid promise, did not assist this defendant in putting said machinery in running order, but left this defendant to put it up as best he could. But the said Pendleton furnished to this defendant the following written instructions as to the use of said said improvement, i. e.: "It is best to use two kinds of flour, say 1st and 2d quality. The quantity of water must depend upon the strength of the flour; it extends from 8 ozs. to 13 ozs. to the lb. of flour. It is best to put in the water with the salt dissolved in it first, then the flour. After the cover is tightly closed admit the gas, and whilst you are raising the pressure in the kneader, set the arms in motion to mix. It should knead in about twenty minutes. Motion about about 40 revolutions per minute. The pans with the dough should be placed in the oven as early as possible. The amount of salt used by us is 52 ozs. to the barrel. The pressure is anywhere between 90 lbs. and 150," as in and by said written instructions now in the possession of this defendant, and ready to be produced as this court may direct, will, on reference, appear.

And this defendant states that he attempted to make use of
40 the machinery aforesaid in the manufacture of bread, by the process described in the specifications attached to said patent and in the aforesaid written instructions of said Pendleton; that he employed competent men, one of whom had had a long experience in making this kind of bread, or in attempting to make it; and that he spared no expense and effort in the premises. But his efforts failed, and resulted in the loss to him of all the material and time employed. And he says that his losses on flour alone were about $500. And he does and will insist that he gave the said specifications and instructions a fair trial, and that good bread cannot be made in that way, and that said Pendleton's aforesaid instructions were worse than useless, and occasioned this defendant a loss of a large sum of money.

And this defendant states that during the progress of his aforesaid attempts at making bread, the bakers of the city of Chicago were

accustomed to meet at the office of this defendant and discuss the general interests of the trade; that at their meetings said Woodman was often present, and was accustomed, with the other bakers, to discuss the said mode of bread-making, and this defendant's attempts in the matter, under his aforesaid contract with said Pendleton, and became fully apprized of the terms of said contract, and often expressed the opinion that this defendant would make nothing by it, and that his said attempts would end in failure.

41 And this defendant further states that the attempts aforesaid consumed the residue of the six months given him by the contract aforesaid to decide as to said purchase; that the said Pendleton, shortly before said six months expired, had an interview with this defendant and requested him to decide; that this defendant informed him of the unfavorable results above detailed, and said that if forced to decide then he should decline the purchase, but that he was willing to try the matter further if the contract could still remain open. Said Pendleton replied that he wished him to make further attempts, and that if he would consent, he, this defendant, should have his own time to determine whether he would make the purchase under said contract, and that said time should be extended to suit the convenience of this defendant. And this defendant, in consideration of said promise and extension, undertook to pursue his experiments further, and to that end made large expenditures of money and labor, and employed two very skillful mechanics and practical bakers of long experience to aid him, and continued his said efforts and expenditures until he attained success, as hereinafter named. And he says that his net losses in making his experiments, including expenditures from which he received no return, amount to about the sum of $4,000. And this defendant says that his success is due to a change in the method of applying the said principle named in

42 said schedule attached to said letters patent, and that such new method was discovered by himself through his said agents employed, as aforesaid.

And this defendant states that the said new method, although discovered earlier, was not fully perfected until the middle or latter part of March, A. D. 1865; that he made some good bread before, but likewise many failures; that at the latter date his bread became excellent in quality, superior, as this defendant believes, to any other in market; that it immediately acquired reputation, and was in active request; that before this time this defendant manufactured from two to four barrels of flour per day, and did not dispose of the product; that afterwards the product of from 20 to 22 barrels daily scarcely supplied the demand; that the said manufacture is likewise conducted at a small expense and yields a large profit, and is of great value to this defendant.

And this defendant further states that said Pendleton has always recognized this defendant's rights under said contract, and has continued to treat the same as still in force since said extension of time was granted, except as hereinafter shown; that on the 17th of December, 1864, he addressed a letter to this defendant in relation

to the said bread, containing among other things, these words: "With regard to the success of this bread I have come to the conclusion that it can be made just what you please. It is only to know the right way and to follow it," as in and by said letter now
43 in the possession of this defendant, and ready to be produced as the court may direct, will more fully appear.

And this defendant further states that on the 25th day of March, 1865, said Pendleton wrote and sent to this defendant a letter in words and figures following:

"NEW YORK, *March 25th*, '65.

"O. KENDALL, Esq., Chicago:

"MY DEAR SIR: On the 3d of this month I re'd your letter dated the 15th of Feb'y, and postmarked the 25th of do. In that letter you informed me of the receipt of mine, written Dec. 17th, and that you proposed to visit New York city in the early part of March.

I did not answer that note, looking daily for your arrival. I now drop you a line to say that I shall leave this place about the first of April; shall be in Rochester a couple of days, say the 3d and 4th, when, if you will take the trouble to come, I will put you in the way to see the ærated bread well and profitably made.

"At Cleveland, on the 6th.

"Very truly, yours,

"JNO. PENDLETON,
"*No.* 4 *West*, 22*d*."

As in and by the said last-named letter now in the possession of this defendant, and ready to be produced as this court may
44 direct, will on reference appear.

And this defendant states that from and after the time that said success was attained by him, he was always ready to close said contract according to its terms, and to pay to said Pendleton all arrearages due thereon, and to execute to said Pendleton his said notes for deferred payments, and to receive from said Pendleton a proper and sufficient assignment of the right to said improvement in said Cook county, and expected and intended to perfect said arrangement at his first interview with said Pendleton; that said Pendleton never expressed to this defendant any dissatisfaction at the delay, and never notified him that he wished to fix any limit to said extension, but always encouraged this defendant to persevere in his efforts, and that the improvement should be this defendant's, if he desired it upon the terms above-named.

And this defendant states, that he was unable to meet the said Pendleton at said Rochester, as he was requested in the letter above-named, and that soon thereafter, and on or about the 20th of April, A. D. 1865, said Pendleton called on this defendant in the city of Chicago, and made an appointment with this defendant to call at his office the next day and make out the necessary papers to carry into effect said sale, and to close said contract according to its terms; and this defendant informed said Pendleton that he had concluded to

make the purchase, and would be ready to do so when said Pendleton called the next day.

And this defendant was then ready, and has ever since been, and still is ready, to carry out said contract, and to conclude said
45 purchase.

And this defendant states that shortly after the interview with said Pendleton last above-named, he received from said Woodman a note in the words following:

"CHICAGO, *April* 20, '65.

"O. KENDALL, Esq.:

"DEAR SIR: I have this day purchased of Mr. John Pendleton his patent for Cook county for making his areated bread, and shall commence to take it immediately, and if you would like to dispose of the apparatus which you have been using I will purchase it at a fair price.

"Yours, truly,

"C. L. WOODMAN."

And this defendant states that immediately upon the receipt of said note he went to the office of said Woodman and found them both, said Woodman and this said complainant, and informed them both that the patent right was his, and that he should maintain his right to it, and that they well knew that said right was his. They then exhibited to this defendant a paper writing, which they claimed was an assignment of said right to said Woodman, but whether it was in form a legal assignment this defendant does not know, and cannot state, but he then informed them, and still insists that said pretended assignment was and is fraudulent and void.

And this defendant states that the said pretended assignment
46 although nominally made to said Woodman, was really made for the benefit of and by the procurement of said complainant, and that if any money was paid therefor it was paid by said complainant, or from the funds of said complainant, and that at the date of said pretended assignment both said Woodman and said complainant were fully apprized of defendant's rights and intentions in the premises.

And this defendant states that in the year 1860 he admitted complainant as a partner in his baking business in said city of Chicago, and that said Dake thus acquired an intimate acquaintance with this defendant's affairs, and acquired a handsome fortune for himself that before this defendant made his said contract with said complainant, the said partnership had ceased; but that a month or two before the said pretended assignment was made to said Woodman, said complainant called upon this defendant, and pretended that he desired to come back into this defendant's store, and make himself useful in some capacity, and as an inducement offered to lend the defendant as much money as he wished; and this defendant and said complainant were in treaty about the proposed employment of the latter by the former several weeks, during which time said complainant, upon pre-

tence of taking an interest in this defendant's business, induced this defendant to explain to him his contract with said Pendleton, and the net profit to be realized before the manufacture aforesaid.

And this defendant confided in said complainant, and
47 informed him upon the points last aforesaid, the said complainant all the time disavowing any intention to go into business for himself. And this defendant was induced by the apparent kindness of the said complainant to borrow of him $2,000 for a few days, which sum said complainant lent him upon his, this defendant's, check; and said complainant stated to this defendant that he considered this defendant's said business the best business in town, and that he would prefer it to any other in the city of Chicago.

And this defendant states, that said negotiation was a mere pretence of the said complainant, devised by him in order to ascertain the facts of said manufacture and of this defendant's rights therein, and to enable said complainant to cheat and defraud this defendant out of said rights; and to devote to his own use the fruits of this defendant's aforesaid efforts, and that during all this pretended treaty with this defendant, said complainant either directly or through the agency of said Woodman, was negotiating with said Pendleton for the purchase of said improvement; and in order to induce said Pendleton to violate said contract and to sell to said complainant or to said Woodman, he, or the said Woodman, by his procurement, as this defendant is informed and believes, made false and fraudulent representations as to this defendant's responsibility, and stated that it would be

unsafe to take defendant's notes, and that he, complainant
48 would not lend said defendant money upon defendant's promise to repay him, but required in addition the pledge of this defendant's book-keeper that he should be repaid.

And this defendant states, on information and belief, that by the representations aforesaid, said Pendleton was induced to make said pretended assignment to said Woodman; and this defendant states that all of said statements were wilfully and corruptly false; that this defendant was perfectly solvent and responsible, and that both said Woodman and said complainant knew the fact. And this defendant insists that the mode in which complainant obtained the knowledge of said improvement from this defendant while in treaty to go into business with or for this defendant, prevented him from obtaining any title to said improvement adverse to this defendant, and that the title under said pretended assignment is fraudulent and void, or if of any validity, is in trust for this defendant. And this defendant admits, on information and belief, that said complainant received from said Woodman, at the time in said bill alleged, a paper writing, which was intended by the said Woodman to be an assignment of the right to said improvement in said Cook county to said complainant, but whether said paper writing, or the pretended assignment from said Pendleton to said Woodman, are legal and sufficient in form and substance, this defendant has no knowledge, information, or belief

He, therefore, neither admits nor denies the allegations of the
49 bill of complaint in that behalf, but leaves complainant to

make proof thereof as he may be advised; but he does and will insist that both said pretended assignments are fraudulent and void for the reosons above stated, or if of any validity, that they are in trust for this defendant.

And this defendant states that said Pendleton did not come to this defendant's office the morning following the interview with defendant last above named, but left the State of Illinois, and has not since returned; and this defendant has had no opportunity to tender to said Pendleton a performance of said contract and the notes and money therein named, and this defendant is about to file a bill against said Pendleton and said complainant for a specific performance of said contract, either by cross-bill in this case, or by original in the said court.

And this defendant admits that he is manufacturing bread, as alleged in said bill, upon the principle above named, and that he is making money thereby; and he does and will insist that he has a right so to do, and will continue said manufacture and sale unless restrained by injunction from this court, and he states that any interruption in said business would occasion him great and irreparable damage. And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without this, that any other matter cause or thing in said bill alleged, and not herein and hereby well and truly answered unto, confessed, and avoided, traversed or denied, is true, to the knowledge and belief of this defendant; and he humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

O. KENDALL.

WOODBRIDGE & GRANT,
Sol'rs, and of Counsel for Def't.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Orrin Kendall, being duly sworn, doth depose and say: That he is the defendant named in the annexed answer and the person making the same; that he has heard said answer read and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it t e true.

O. KENDALL.

Subscribed and sworn to before me this 29th day of May, A. D. 1865.

E. A. DRUMMOND,
U. S. Com'r.

5-ct. rev. stamd, cancelled.]

Endorsed: Filed May 29, 1865. Wm. H. Bradley, cl'k.

to the said bread, containing among other things, these words: "With regard to the success of this bread I have come to the conclusion that it can be made just what you please. It is only to know the right way and to follow it," as in and by said letter now
43 in the possession of this defendant, and ready to be produced as the court may direct, will more fully appear.

And this defendant further states that on the 25th day of March, 1865, said Pendleton wrote and sent to this defendant a letter in words and figures following:

"NEW YORK, *March 25th*, '65.

"O. KENDALL, Esq., Chicago:

"MY DEAR SIR: On the 3d of this month I re'd your letter dated the 15th of Feb'y, and postmarked the 25th of do. In that letter you informed me of the receipt of mine, written Dec. 17th, and that you proposed to visit New York city in the early part of March.

I did not answer that note, looking daily for your arrival. I now drop you a line to say that I shall leave this place about the first of April; shall be in Rochester a couple of days, say the 3d and 4th, when, if you will take the trouble to come, I will put you in the way to see the ærated bread well and profitably made.

"At Cleveland, on the 6th.

"Very truly, yours,

"JNO. PENDLETON,
"*No.* 4 *West*, 22*d*."

As in and by the said last-named letter now in the possession of this defendant, and ready to be produced as this court may
44 direct, will on reference appear.

And this defendant states that from and after the time that said success was attained by him, he was always ready to close said contract according to its terms, and to pay to said Pendleton all arrearages due thereon, and to execute to said Pendleton his said notes for deferred payments, and to receive from said Pendleton a proper and sufficient assignment of the right to said improvement in said Cook county, and expected and intended to perfect said arrangement at his first interview with said Pendleton; that said Pendleton never expressed to this defendant any dissatisfaction at the delay, and never notified him that he wished to fix any limit to said extension, but always encouraged this defendant to persevere in his efforts, and that the improvement should be this defendant's, if he desired it upon the terms above-named.

And this defendant states, that he was unable to meet the said Pendleton at said Rochester, as he was requested in the letter above-named, and that soon thereafter, and on or about the 20th of April, A. D. 1865, said Pendleton called on this defendant in the city of Chicago, and made an appointment with this defendant to call at his office the next day and make out the necessary papers to carry into effect said sale, and to close said contract according to its terms; and this defendant informed said Pendleton that he had concluded to

make the purchase, and would be ready to do so when said Pendleton called the next day.

And this defendant was then ready, and has ever since been, and still is ready, to carry out said contract, and to conclude said
45 purchase.

And this defendant states that shortly after the interview with said Pendleton last above-named, he received from said Woodman a note in the words following:

"CHICAGO, *April* 20, '65.

"O. KENDALL, Esq.:

"DEAR SIR: I have this day purchased of Mr. John Pendleton his patent for Cook county for making his areated bread, and shall commence to take it immediately, and if you would like to dispose of the apparatus which you have been using I will purchase it at a fair price.

"Yours, truly,

"C. L. WOODMAN."

And this defendant states that immediately upon the receipt of said note he went to the office of said Woodman and found them both, said Woodman and this said complainant, and informed them both that the patent right was his, and that he should maintain his right to it, and that they well knew that said right was his. They then exhibited to this defendant a paper writing, which they claimed was an assignment of said right to said Woodman, but whether it was in form a legal assignment this defendant does not know, and cannot state, but he then informed them, and still insists that said pretended assignment was and is fraudulent and void.

And this defendant states that the said pretended assignment
46 although nominally made to said Woodman, was really made for the benefit of and by the procurement of said complainant, and that if any money was paid therefor it was paid by said complainant, or from the funds of said complainant, and that at the date of said pretended assignment both said Woodman and said complainant were fully apprized of defendant's rights and intentions in the premises.

And this defendant states that in the year 1860 he admitted complainant as a partner in his baking business in said city of Chicago, and that said Dake thus acquired an intimate acquaintance with this defendant's affairs, and acquired a handsome fortune for himself that before this defendant made his said contract with said complainant, the said partnership had ceased; but that a month or two before the said pretended assignment was made to said Woodman, said complainant called upon this defendant, and pretended that he desired to come back into this defendant's store, and make himself useful in some capacity, and as an inducement offered to lend the defendant as much money as he wished; and this defendant and said complainant were in treaty about the proposed employment of the latter by the former several weeks, during which time said complainant, upon pre-

tence of taking an interest in this defendant's business, induced this defendant to explain to him his contract with said Pendleton, and the net profit to be realized before the manufacture aforesaid.

And this defendant confided in said complainant, and
47 informed him upon the points last aforesaid, the said complainant all the time disavowing any intention to go into business for himself. And this defendant was induced by the apparent kindness of the said complainant to borrow of him $2,000 for a few days, which sum said complainant lent him upon his, this defendant's, check; and said complainant stated to this defendant that he considered this defendant's said business the best business in town, and that he would prefer it to any other in the city of Chicago.

And this defendant states, that said negotiation was a mere pretence of the said complainant, devised by him in order to ascertain the facts of said manufacture and of this defendant's rights therein, and to enable said complainant to cheat and defraud this defendant out of said rights; and to devote to his own use the fruits of this defendant's aforesaid efforts, and that during all this pretended treaty with this defendant, said complainant either directly or through the agency of said Woodman, was negotiating with said Pendleton for the purchase of said improvement; and in order to induce said Pendleton to violate said contract and to sell to said complainant or to said Woodman, he, or the said Woodman, by his procurement, as this defendant is informed and believes, made false and fraudulent representations as to this defendant's responsibility, and stated that it would be

unsafe to take defendant's notes, and that he, complainant
48 would not lend said defendant money upon defendant's promise to repay him, but required in addition the pledge of this defendant's book-keeper that he should be repaid.

And this defendant states, on information and belief, that by the representations aforesaid, said Pendleton was induced to make said pretended assignment to said Woodman; and this defendant states that all of said statements were wilfully and corruptly false; that this defendant was perfectly solvent and responsible, and that both said Woodman and said complainant knew the fact. And this defendant insists that the mode in which complainant obtained the knowledge of said improvement from this defendant while in treaty to go into business with or for this defendant, prevented him from obtaining any title to said improvement adverse to this defendant, and that the title under said pretended assignment is fraudulent and void, or if of any validity, is in trust for this defendant. And this defendant admits, on information and belief, that said complainant received from said Woodman, at the time in said bill alleged, a paper writing, which was intended by the said Woodman to be an assignment of the right to said improvement in said Cook county to said complainant, but whether said paper writing, or the pretended assignment from said Pendleton to said Woodman, are legal and sufficient in form and substance, this defendant has no knowledge, information, or belief

He, therefore, neither admits nor denies the allegations of the
49 bill of complaint in that behalf, but leaves complainant to

make proof thereof as he may be advised; but he does and will insist that both said pretended assignments are fraudulent and void for the reosons above stated, or if of any validity, that they are in trust for this defendant.

And this defendant states that said Pendleton did not come to this defendant's office the morning following the interview with defendant last above named, but left the State of Illinois, and has not since returned; and this defendant has had no opportunity to tender to said Pendleton a performance of said contract and the notes and money therein named, and this defendant is about to file a bill against said Pendleton and said complainant for a specific performance of said contract, either by cross-bill in this case, or by original in the said court.

And this defendant admits that he is manufacturing bread, as alleged in said bill, upon the principle above named, and that he is making money thereby; and he does and will insist that he has a right so to do, and will continue said manufacture and sale unless restrained by injunction from this court, and he states that any interruption in said business would occasion him great and irreparable damage. And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without this, that any other matter cause or thing in said bill alleged, and not herein and hereby well and truly answered unto, confessed, and avoided, traversed or denied, is true, to the knowledge and belief of this defendant; and he humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

O. KENDALL.

WOODBRIDGE & GRANT,
Sol'rs, and of Counsel for Def't.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Orrin Kendall, being duly sworn, doth depose and say: That he is the defendant named in the annexed answer and the person making the same; that he has heard said answer read and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it t e true.

O. KENDALL.

Subscribed and sworn to before me this 29th day of May, A. D. 1865.

E. A. DRUMMOND,
U. S. Com'r.

5-ct. rev. stamd, cancelled.]

Endorsed: Filed May 29, 1865. Wm. H. Bradley, cl'k.

51 And on this day, to wit, Monday, the fifth day of June, A. D. 1865, in the record of the proceedings of said court, in said entitled cause, is the following entry, to wit:

Leave to amend bill.

JOSEPH M. DAKE
vs.
ORRIN KENDALL. } Chancery.

On motion of the complainant, by his solicitors, leave is given by the court, to amend his bill of complaint herein.

And on said 5th day of June came the said complainant, by his solicitors, and filed in the clerk's office of said court, the amendments to his bill of complaint in said entitled cause, in the words and figures, to wit:

Amendments.

JOSEPH M. DAKE
vs.
ORRIN KENDALL.

In equity before the honorable justices of the Circuit Court of the United States within and for the northern district of Illinois, sitting in equity.

Amendments to the bill of complaint in this cause, made pursuant to an order of this court, dated this 5th day of June, instant:

52 Strike out the last two lines on the 5th page, and the first eight lines on the 6th page of bill, and insert in place thereof the following, to wit: "the 17th day of April, A. D. 1865, at the city of Cincinnatti, in the State of Ohio, the said John Pendleton entered into an agreement in writing, with Charles L. Woodman, of the city of Chicago, county of Cook, and State of Illinois, to sell to the said Woodman the sole and exclusive right to said letters patent in and for said county of Cook, which said agreement in writing is in words and figures following, to wit:

"Whereas, James Perry, Daniel Fitzgerald, and Horatio Bogert obtained a patent from the government of the United States, dated March 9th, 1858, for certain new and useful improvements in the process of raising and preparing dough, the title to which for the county of Cook, and State of Illinois, is vested, by assignment, in John Pendleton, of New York, which right in Cook county, Charles L. Woodman, of Chicago, desires to buy. Now said John Pendleton and Charles L. Woodman have contracted as follows: said Charles L. Woodman agrees, by May 1st, A. D. 1865, to pay said John Pendleton five thousand dollars in cash, for the right to said patent for said Cook county, Illinois, and said John Pendleton agrees thereupon, for said sum, to assign all the right, title, and interest of said patent in and for said Cook county to said Charles L. Woodproper written paper assignment now drawn in

blank and ready for signature and delivery, and in the hands of said John Pendleton."

Witness the hands of the parties at Cincinnatti, Ohio, April 17th, 1865.

JNO. PENDLETON.
CHARLES L. WOODMAN.

Attest: G. W. LEE.

[Rev. stamp 5 cents.]

And your orators further show unto your honors, that at the time and place last aforesaid, the said John Pendleton drew up and executed an assignment of said patent right in and for said county of Cook, to the said Woodman, but did not, at that time, deliver the same; that afterwards, to wit, on the 20th of April, aforesaid, at the city of Chicago, the said Pendleton delivered said assignment to said Woodman, and the said Woodman, upon the delivery thereof, to wit, on the 20th day of April, aforesaid, paid to the said Pendleton the sum of five thousand dollars, the full consideration therefor.

And your orator further shows, that upon the delivery of said assignment, on the 20th day of April, aforesaid, the said Pendleton, by accident, omitted to date the same; but on the following day, to wit, on the 21st day of April, aforesaid, the said Pendleton, upon his attention being called to the same, added the date to said
54 assignment, and dated the same on the 21st of April, aforesaid, one day after said assignment had been delivered, and said sum of $5,000 had been paid as aforesaid.

JOSEPH M. DAKE.

D. C. & I. J. NICHOLS,
Sol'ts for Comp't.

Oath.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

On this fifth day of June, A. D. 1865, before me personally appeared the above-named Joseph M. Dake, and made oath that he has heard read the above amendments subscribed by him and knows the contents thereof, and that the same are true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

WM. H. BRADLEY, *Clerk.*

Endorsed: Filed June 5th, 1865. Wm. H. Bradley, Cl'k.

55 And on this day, to wit, the sixth day of June, A. D. 1865, was filed in the office of the clerk of said court, the complainant's replication to the answer of said defendant, which replication is in the words and figures following, to wit:

Before the Justices of the Circuit Court of the United States for the northern district of Illinois, sitting in equity. In Chancery.

Replication to answer.

The replication of Joseph M. Dake, complainant, to the answer of Orrin Kendall, defendant.

This repliant, saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of said answer for replication thereunto, says that he will aver, maintain, and prove, his bill of complaint to be true, certain, and sufficient, in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well sufficiently replied unto, confessed, and avoided, traversed or denied, is true; all which matters and
56 thing this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and hereby prays, as in and by his said bill he has already prayed.

D. C. & I. J. NICHOLES,
Sol't'rs for comp't.

Endorsed: Filed June 6th, 1865. Wm. H. Bradley, cl'k.

57 And on this day, to wit, the 17th day of June, A. D. 1865, came Orrin Kendall, defendant in original bill, and files in the office of the clerk of said court his cross-bill to said entitled cause, which cross bill is in the words and figures following, to wit:

In Equity.

Defendant's cross-bill.

To the Hon. Justices of the Circuit Court of the United States within and for the northern district of the State of Illinois, sitting in equity :

Orrin Kendall, a citizen of the United States, and of the State of Illinois, and a resident of said northern district of Illinois, brings this his cross-bill against Joseph M. Dake, who is likewise a citizen of the United States and of the State of Illinois, and a resident of said northern district.

And thereupon your orator shews, that James Perry and Elisha Fitzgerald, both citizens of the United States, being the true and original inventors of a new and useful improvement, not known or used before their application for letters patent, and having assigned their right, title, and interest in said improvement to James Perry,

Daniel Fitzgerald, and Horatio Bogart, citizens of the United States, did apply to the Commissioner of Patents of the United States for letters patent for such invention to issue to their said assigns,
58 and having fully and in all respects complied with all the requisitions of law in that behalf, and especially having made oath that they verily believed themselves to be the true inventors and discoverers of such improvement; and having also paid into the Treasury of the United States the sum of thirty dollars, and having presented to the said commissioner a petition setting forth their desire to obtain, in behalf of their said assigns, an exclusive property in the said improvement, and praying that for that purpose letters patent might be granted to said assigns; and having also delivered and filed in the Patent Office a written description of their said invention and improvement, and of the manner of using the same, and accompanied the same with drawings thereof and written references, which said written description was duly signed by them, and attested by two witnesses. And thereupon letters patent for the said invention, in due form of law, under the seal of the Patent Office of the United States, signed and countersigned by the proper officers of the United States, and bearing date March 9th, A. D. 1858, were granted, issued, and delivered to said assignees, their heirs, executors,
59 administrators, and assigns, for the term of fourteen years from the date thereof, the full and exclusive right and liberty of making, constructing, and vending to others to be used, the said invention, which is entitled in the said letters patent, "A new and useful improvement in raising dough," a copy of which letters patent, and of the schedule thereto attached, is attached to the original bill of complaint, filed by said Dake in this case and marked "Exhibit A;" and your orator prays leave to refer to said copy for greater certainty.

And your orator further shows unto your honors, that Horatio Bogart, of the city, county, and State of New York, after the issuing of the said letters patent, as aforesaid, and on or about the 20th day of October, A. D. 1859, obtained from the said James Perry, Daniel Fitzgerald, and Horatio Bogart the sole and exclusive right to said letters patent and invention and improvement, for and in the county of Cook and State of Illinois, and other territory; and that afterwards, and on or about February 14th, A. D. 1861, said Willard Parker did obtain, by assignment of that date from said Bogart the sole and exclusive right to the said letters patent and invention or discovery, for and in said Cook county; and that afterwards,
60 and on or about March 17th, A. D. 1864, John Pendleton, of the city and county and State of New York, did obtain, by assignment of that date from the said Willard Parker the sole and exclusive right to the said letters patent and invention or discovery, for and in said Cook county.

And your orator further sheweth, that at the date of the purchase of said Pendleton, as aforesaid, and for nearly a year thereafter, said improvement had not been shewn to be economical and useful; that many unsuccessful efforts had been made to use the same, and

that most of the prominent bakers in the country were of the opinion that it was of no value; that soon after said Pendleton bought the same he offered it to several prominent bakers in the city of Chicago, who, upon investigation, declined the offer; that he also offered it to your orator, (who is a practical baker of many years standing,) and as an inducement to your orator to buy, promised to procure for your orator, immediately upon the completion of the proposed contract, the necessary machinery, and to assist your orator in putting the same in operation.

And your orator, relying upon said promise, on or about June 14th, 1864, entered into an agreement in writing with said Pendle-
61 ton, reciting, among other things, that said Kendall "proposes to purchase of said Pendleton" the right so conferred by said letters patent "in the county of Cook and State of Illinois," at the sum sixty-five hundred dollars;" and it was thirdly agreed between them, that in consideration of five hundred dollars, paid by your orator to said Pendleton, your orator should have the right, the privileges conferred by said letters patent, and the process therein described, within the whole county of Cook, in the State of Illinois, for six months from June 14th, 1864; and at the end of said six months your orator should have the privilege of buying the perpetual right conferred by said letters patent, at the additional sum of $6,000 00, payable in six original instalments of six, twelve, eighteen, twenty-four, thirty, and thirty-six months from December 14th, 1864, and bearing interest at the rate of seven per cent., payable annually; and that if at the end of said period your orator should decline to make the full purchase of said right for said Cook county, the said Pendleton should retain the said $500, and be relieved from said obligation. But if said Kendall should elect to purchase said right, it was by said contract further agreed that said Pendle-
62 ton should make a good and sufficient transfer of all the franchises and priviliges conferred by said letters patent within and for said Cook county to your orator and his assigns, and that your orator should give his six notes for said instalments, with interest, as aforesaid. And it was further thereby agreed that in the event of your orator electing to purchase the remainder of the patent right from December 14th, 1864, the interest then accrued on said six thousand dollars, would then be due and payable, as by the said contract duly signed by the said Pendleton and your orator, and and by the said Pendleton duly delivered to your orator. and now in the possession of your orator, ready to be produced as the court may direct, will on reference appear.

And your orator duly paid said first instalment of $500 on said contract by his note of that amount which said Pendleton received as cash, and which your orator has since paid in cash; but the said Pendleton was so negligent about the said machinery that the same did not reach Chicago until about the first of August, 1864, and was then so imperfect and in such bad order that your orator was compelled to send it to the foundry to be completed and repaired; and your

63 orator did not commence using the same until sometime in September, 1864.

And your orator states that said Pendleton did not assist your orator in putting said machinery in working order, but furnished certain written instructions as to its use in addition to the specifications attached to said letters patent; that these instructions were followed by your orator in his first attempts to manufacture this bread, and for sometime thereafter; that in these attempts he spared neither labor nor expense, and was assisted by competent workmen and used the best materials, but without success, and he thus suffered great loss; and he does and will insist that he gave said instructions a fair trial, and that good bread cannot be made in that way; and that he was misled by said instructions and suffered great loss thereby.

And your orator sheweth, that the residue of the time given him to decide, as to said purchase was thus consumed, and that your orator informed said Pendleton, that if forced to decide then he should not purchase, but was willing to make a further trial,

64 if the contract could remain open. And said Pendleton urged your orator to make such further trial, and promised your orator that [that] he should have his own time to decide as to said purchase under said contract, and that said time should be extended to suit your orator's convenience; and in consideration thereof, your orator undertook to pursue, and did pursue, his experiments further, and continued his expenditures and efforts, and at last attained success.

And your orator shews that his net losses and expenses in the progress of this business amount to $4,000; and he states that his present success is due to an abandonment of said instructions, and to a different plan which was adopted and put in practice by your orator.

And your orators showeth that said new plan was not perfected until sometime in March, 1865; that he made some good bread before, but likewise many failures; that at the latter date his bread began to be uniformly excellent and superior to, as your orator believes, to any other made in the market, and commanded a ready sale at a large profit; and said improvement thereupon became, and still continues to be, of great value to your orator.

65 And yonr orator sheweth, that said Pendleton has always, since said extension, recognized your orator's said rights under said contract, and has treated said contract as still in force, except as hereinafter named. And your orator, ever since he attained success, as aforesaid, has always been ready to complete said purchase according to said contract, and expected and intended so to do at his first interview with said Pendleton thereafter; that said Pendleton never expressed to your orator any dissatisfaction at the delay, and never notified him that he wished to fix any limit to said extension.

And your orator sheweth that on the 20th of April, 1865, said Pendleton agreed with your orator to come to the office of your orator in said Chicago the next morning and complete the sale of said patent right to your orator according to the said contract; that said Pendleton had just arrived in the State of Illinois after an absence

of many months, and that this agreement was made at your orator's first interview with him after his arrival, and that your orator was then ready to complete said purchase; that on the same day of said interview, and shortly thereafter, one Charles L. Woodman
66 informed your orator that he, said Woodman, had purchased from said Pendleton the said patent right for said Cook county. And your orator immediately informed said Woodman, and likewise said defendant, Dake, that your orator owned said patent right, and that they well knew it, and that he, your orator, would maintain his rights. And your orator is informed and believes that said Pendleton has made a pretended assignment of said patent right to said Woodman, and that said Woodman has, in like manner, made a pretended assignment of the same to said Dake, but your orator states and insists that long before either of said pretended assignments were made, and ever since, said Woodman and said Dake well knew your orator's rights in the premises under his said contract with said Pendleton, and said extension thereof.

And your orator showeth that until said Woodman informed your orator of said pretended assignment from Pendleton, your orator never heard that said Pendleton had sold, or intended to sell, said patent right to said Woodman, or to any one else, except your orator, or that said Pendleton was at all dissatisfied with your orator's conduct in the premises. And your orator states, on informa-
67 tion and belief, that said assignment, although made to said Woodman, was, in fact, made for the benefit of said Dake, and that if any money was paid thereon said Dake paid it from his own funds. And your orator is well acquainted with the said Dake and once admitted him into partnership in his business, and was thus the means of making said Dake rich. And the said Dake has recently and since said bread found a success under the management of your orator, renewed his intimacy with your orator, and has offered to go into business with or for your orator, and to lend your orator as much money as he might wish, up to $10,000, as an inducement; and while in treaty for such business arrangement, induced your orator to explain to him your orator's said contract with said Pendleton and said extension, and your orator's rights and intentions in the premises, and the net profit realized upon the said bread; and your orator informed him upon all these points in strict confidence, relying upon the assurance given him by the said Dake that he, said Dake, would not go into business for himself, and because of the said treaty between them for a business connexion.

And your orator believes that during this treaty with your
68 orator, said Dake was using the knowledge thus acquired in the business of cheating, or attempting to cheat, your orator out of his said rights, and was negotiating either directly or indirectly with said Pendleton for the purchase of said patent right; and in order to induce said Pendleton to sell to him was either personally, or by his agents, making false and fradulent representations as to your orator's responsibility, and stating to said Pendleton that he could not safely take your orator's notes, and that he, Dake, had refused to

lend your orator money upon your orator's promise to repay him, but had required, in addition, the pledge of your orator's book-keeper that he should be repaid. And your orator states, on information and belief, that by reason of doubts of your orator's solvency thus induced, said Pendleton was wholly, or in part, persuaded to make said pretended assignment to said Woodman. And your orator states that all of said representations were wilfully and unjustly false; that your orator then was, and still is, perfectly solvent, and that both said Woodman and said Dake knew the fact, and that said Dake,
69 about the time said statements were made, offerred to lend your orator any amount he might require in his business, up to $10,000, and said nothing about security. And your orator does and will insist that the manner in which said Dake obtained his knowledge of said improvement, and of the rights of your orator therein, and of his intentions in relation thereto, while in treaty to go into business with, or for your orator, established a fiduciary relation between your orator and the said Dake, and prevented said Dake, from obtaining any title to said improvement adverse to your orator, and that the title thus acquired is either fraudulent and void, or if of any validity, is in trust for your orator. And your orator further showeth that said Pendleton failed to meet his aforesaid appointment with your orator for the morning of April 21st, 1865, and left Chicago before your orator could tender to him the notes and money required by said contract, and could demand from him the specific performance of said contract, and did not again return until a few days last part. And that upon his return, and upon the 14th
70 day of June, A. D. 1865, your orator, by his agent, tendered to said Pendleton, all money, both principal and interest, in arrear and unpaid upon the said contract between him and your orator; also the six notes required by said contract, all dated December 14th, 1864, all duly stamped, all executed by your orator, each for the principal sum of $1,000, and payable respectively in 6, 12, 18, 24, 30 and 36 months, from said date, with interest at the rate of seven per centum per annum, payable annually, all payable to the order of the said Pendleton; also the amount of said note payable in six months, with interest to said date of tender, and requested said Pendleton specifically to perform his aforesaid contract with your orator, and to convey to him said patent right.

And your orator further sheweth that at the same time and place, directly after the aforesaid tender, he tendered the same money offered to Pendleton as aforesaid, to said Dake, and likewise six notes in all respects like those tendered to Pendleton as aforesaid, except that they were payable to the order of said Dake and also
71 tendered to said Drake, the principal and interest then due on said six months note to him, and demanded from said Dake an assignment of said patent right your orator; but said Pendleton, and said Dake, absolutely refused to comply with your orator's aforesaid reasonable demands as in justice and equity they should have done; and your orator thereupon filed his bill of complaint in the Circuit Court of Cook county, in the State of Illinois, against the

said Pendleton, Woodman and Dake, alleging the facts aforesaid, offiering specifically to perform his said contract with said Pendleton, and praying the court to require, among other things, the specific performance of the same, which said bill of complaint and the cause thus commenced is still pending and undetermined in said Circuit Court of Cook county; and the said Dake hath filed in this court his bill of complaint, alleging the granting of said letters patent, as aforesaid, and the chain of title through which said Pendleton, acquired the same in the said county of Cook, and pretending that the
72 alleged assignments from said Pendleton to said Woodman, and from said Woodman to said Dake, conferred a title to the same upon said Dake, and alleging that the aforesaid use of said improvement by your orator, was an infringment of said Dake's rights therein, (whereas your orator charges the contrary thereof to be the fact,) and praying that your orator may be compelled to account for and pay over to said Dake such gains and profits as had accrued or arrisen to your orator in the use and application of said patent right, and that your orator and his attorneys, agents, servants, contractors and workmen, might be restrained and enjoined from using or causing to be used, said improvement, and likewise the writ of injunction enjoining or restraining your orator as aforesaid. Whereas the said Dake, well knew, and your orator charges, that he was not entitled to any such relief in the premises.

And your orator further sheweth into your honors, that said Dake is now fitting up a bakery and appropriate machinery, in the city of Chicago, for the use of said improvement, and for the
73 manufacture of bread by the application thereof, and threatens and intends to put the same in immediate operation; all which actings, doings and pretenses of the said Dake are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator in the premises.

In tender consideration whereof, and forasmuch as your orator is remediless in the premises, by the rules of the common law, and can only have relief in a court of equity; to the end, therefore, that the defendant may, without oath, answer all and singular the premises, and that he, his attorneys, agents, servants, contractors and workmen may be perpetually enjoined and restrained by the decree of this court from using, or causing to be used, said improvement in the county of Cook, in the State of Illinois, and from using, or causing to be used, in said Cook county any process of preparing dough for baking substantially like and upon the plan and principle of said improvement in said letters patent prescribed, or for such
74 other or further relief as may be agreeable to equity, may it please your honors to grant unto your orator the writ of injunction, issuing out and under the seal of this court, enjoining and restraining said defendant, as in the prayer of this your orator's cross-bill set forth.

And your orator will ever pray, &c.

O. KENDALL.
WOODBRIDGE & GRANT,
Sol'rs and of counsel for Comp't.

[5-cent stamp.]

Subscribed and sworn to before me this 17th day of June, A. D. 1865.

E. A. DRUMMOND,
U. S. Com'r.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

On this 17th day of May, A. D. 1865, before me personally appeared the above-named complainant, Orrin Kendall, and made oath, that he had heard read the above cross-bill subscribed
75 by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters he believes it to be true.

E. A. DRUMMOND,
U. S. Com'r.

Endorsed: Filed, June 17, 1865. Wm. H. Bradley, Cl'k.

76 And on this day, to wit, the 17th day of June, A. D. 1865, in the record of proceedings of said court, in said entitled cause, is the following entry, to wit:

Motion for Injunction.

JOSEPH M. DAKE
vs.
ORRIN KENDALL. } Chancery.

Now comes the complainant, by his solicitor, who moves the court for an injunction against the defendant; and after hearing the arguments of council, the court not being sufficiently advised in the premises, takes times to consider.

And on this day, to wit, the 19th day of June, A. D. 1865, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

Motion for inj. allowed unless on filing bond in $5,000.

JOSEPH M. DAKE
vs.
ORRIN KENDALL. } Chancery.

The court having considered, and being now fully advised upon the application of the complainant for an injunction against the defendant herein, sustains said motion, and orders that an injunction issue against said defendant, enjoining and restraining him as prayed for in the complainant's bill of complaint, unless the said
77 defendant shall enter into bond to the complainant, in the penal sum of five thousand dollars, with security to be approved

by the court, conditioned that the said defendant pay and satisfy any decree which the court may render in the premises, said bond to be filed by Friday morning next.

And on this day, to wit, the 21st day of June, A. D. 1865, the defendant filed in the office of the clerk of said court, in pusurance of said orders, his bond in the words and figures following, to wit.

Defendant's bond.—June 21st, 1865.

Know all men by these presents, that we, Orrin Kendall, as principal, and William Blair and Claudius B. Nelson, as sureties, all of the city of Chicago, in the county of Cook and State of Illinois, are held and firmly bound unto Joseph M. Dake, of the same place, in the penal sum of five thousand dollars, ($5,000,) lawful money of the United States, to be paid to the said Dake, his executors, administrators, or assigns, for which payment well and truly to be made, we bind ourselves jointly and severally, and our respective executors, and administrators, firmly by these presents. Sealed with our seals, and dated at Chicago, this 21st day of June of A. D. 1865.

78 The condition of this obligation is such, that whereas, the Circuit Court of the United States within and for the northern district of Illinois, in a cause in equity therein pending, wherein said Joseph M. Dake was complainant, and said Orrin Kendall was defendant, on the 19th day of June, A. D. 1865, ordered that an injunction issue against said defendant, restraining him as prayed for in said complainant's bill of complaint, unless said defendant should enter into bond to said complainant in the penal sum of five thousand dollars, with security to be approved by said court, conditioned that said defendant pay and satisfy any decree which said court might render against him in the premises, said bond to be filed by Friday morning, then next ensuing.

Now, therefore, if the above bounden, Orrin Kendall shall well and truly pay, and satisfy any decree which said court may render against him in the said suit, then this obligation to be null and void, otherwise to be and remain in full force and virtue.

[SEAL.] ORRIN KENDALL.
[SEAL.] WILLIAM BLAIR.
[SEAL.] CLAUDIUS B. NELSON.

Attest:
JNO. WOODBRIDGE, jr.

Approved. THOMAS DRUMMOND.

Endorsed: Filed June 21st, 1865. Wm. H. Bradley, cl'k.

79 And on this day, to wit, the 23rd, day of June, A. D. 1865, comes Joseph M. Dake, by his solicitors, and filed his answer to the cross-bill in said entitled cause, which answer, together

with the exhibits attached, are in the words and figures following, to wit:

United States Circuit Court, northern district of Illinois.

ORRIN KENDALL
vs.
JOSEPH M. DAKE. } In Chancery.

Answer to cross-bill.

The answer of Joseph M. Dake, the sole defendant to the cross-bill of complaint of Orrin Kendall, filed in a certain suit wherein the said Joseph M. Dake is complainant, and the said Orrin Kendall is defendant:

And now comes the said respondent, Joseph M. Dake, saving and reserving to himself all manner of advantage from the many uncertainties and insufficiencies in the said cross-bill of complaint, pro-
80 testing that the same, with the matters and things therein contained, are not sufficient to require an answer thereto; yet the said respondent, for answer thereunto, or to so much thereof as he is advised is necessary or material to be answered unto, says that he admits that a patent issued to James Perry, Daniel Fitzgerald and Horatio Bogart for an invention called "A new and useful improvement in raising dough," at the time and in the manner stated in said cross-bill, and that the right to use said improvement, so secured by letters patent, in the county of Cook and State of Illinois, was duly assigned, passed to, and vested in the said John Pendleton, as alleged in said cross-bill,

And this respondent, upon his information and belief, denies that at the date of said Pendleton's purchase, and for nearly a year thereafter, said improvement had not been shown to be economical and useful; and he denies that most of the prominent bakers of the country were of the opinion that it was of no value, but on
81 the contrary, he says the truth is that the said improvement had been used successfully in many places before the purchase by said Pendleton, and its economy, usefulness, and value had been well established.

And this respondent, upon his information and belief, denies that said Pendleton promised to procure machinery for the said Kendall, or to assist in putting the same in operation; but, on his information aud belief, says that the entire contract between said Pendleton and Kendall was reduced to writing; and afterwards the said Pendleton, as a matter of friendship and kindness, offered to inform said Kendall of any second-hand machinery that he might hear of, to enable said Kendall to commence the manufacture earlier than he could if he procured new machinery from the foundry; and that the said Pendleton did notify said Kendall that he could purchase such second-
82 hand articles of a Mr. Marvin, of New York; and that said Kendall sent and purchased the same on his own account, without reference to the assistance of said Pendleton.

And this respondent says that the said written contract being the sole and only one made between said Pendleton and said Kendall, is shown by a copy thereof, hereto annexed as exhibit A, as he is informed and believes. And this respondent admits that said Kendall gave his promissory note for the five hundred dollars specified in said contract, payable in six months, with seven per cent. interest, but he denies, on his information and belief, that the same was received or treated as cash.

And this respondent, further answering, says, on his information and belief, that said Pendleton at the time of making said contract gave some information in regard to the manner of raising the dough and working the machinery at the request of said Kendall; but he
83 denies, on his information and belief, that said instructions were given as a guide on which said Kendall alone was to rely, or that the same were different in substance from the specifications attached to the letters patent; on the contrary, this respondent avers, on his information and belief, that said Kendall then proposed and expected to, and did, employ one Wicks who was a practical baker, and had been engaged in the successful manufacture of aerated bread for some time at Milwaukee; and said Kendall expected to, and did rely on said Wicks and Connelius Kendall, a son of said complainant, in the cross bill, aided by the specifications attached to the letters patent, to use this process or improvement; and this respondent on his information and belief, denies that said Kendall was mislead by any instructions of said Pendleton, or that he failed to make good bread by such process because of any fault in the specifications;
84 but this respondent is informed and believes, and therefore states, that the machinery purchased by said Kendall was defective, and the said Kendall and his workmen departed from the specifications, and therefore failed to some extent in making good bread.

And this respondent denies, on his information and belief, that the said Kendall lost any considerable sum by experiments; but on the contrary, with little exception, said Kendall sold all the bread he made for sale.

And this respondent, on his information and belief, denies expressly that any contract was made by said Pendleton with said Kendall to extend the time after the 1st day of October, 1864, for the said Kendall to decide whether or not he would purchase said right for Cook county aforesaid; but this respondent, on his information and belief, says that after the 1st day of October, 1864, namely, about
85 the 6th day of that month, that said Kendall, on application of said Pendleton, refused to decide whether he would purchase or not, and thereupon said Pendleton said to said Kendall that he would not seek a buyer before the 14th day of the next December following; and while the said Pendleton was willing after that to sell to said Kendall said right, and was therefore willing that he should satisfy himself by the manufacture of said aerated bread, yet he was equally willing to sell to any other person, and the said Pendleton did not consider himself under any legal or moral obligation to sell

the same to said Kendall, and in fact he was not under any such obligation. And this respondent further states, on his information and belief, that said Kendall did not elect or notify the said Pendleton of his determination to purchase said patent right under said contract at any time; until after the sale of the same to this respondent;
86 and that said Kendall misrepresented to said Pendleton the real success he was having with such manufacture, for the purpose of procuring the same from said Pendleton for a sum less than he had agreed by his contract to pay; and that the real object of said Kendall in neglecting and refusing to perform or complete said contract was to obtain the said right for a less sum.

And this respondent denies, on his information and belief, that said Pendleton agreed to go to see said Kendall on the 21st day of April last, to complete said purchase; but on his information and belief this respondent states the truth to be, that said Pendleton, after he had sold and arranged said patent right for Cook county to the said Charles Woodman and received payment therefor, called on said Kendall at his place of business in Chicago, on the 20th day of April last, for the sole purpose of collecting the sum due on the said
87 note for five hundred dollars, and that said Pendleton requested payment of the same, and said Kendall declined to pay, and that no reference was made to the purchase of said right for Cook county at that time, and the only reference to a call the next day was by the enquiry of said Pendleton as to whether he could pay the note the next day, to which said Kendall said he could not.

And this respondent, further answering, says that on the 17th day of April, A. D. 1865, at Cincinnati, Ohio, the said John Pendleton, made a contract with Charles L. Woodman, whereby he agreed to sell the said patent right, called "a new and useful improvement for raising dough," to be used in the county of Cook and State of Illinois, for the sum of five thousand dollars, to be paid on or before the 1st day of May thereafter, as will fully and particularly appear by
88 a copy of said contract annexed hereto marked Exhibit B, and made a part of this answer; and that afterwards, in pursuance of said contract, and an arrangement then and there made between the said Pendleton and Woodman, the said John Pendleton came to the city of Chicago, where he arrived at noon, on the 20th day of April last, and immediately after his arrival, on the same day, he delivered the assignment prepared in Cincinnati, and referred to in said contract to said Charles L. Woodman, complete in all respects except by inadvertence the day of the month was not inserted, and then and there the respondent furnished to said Woodman the sum of five thousand dollars, which was then and there paid to said John Pendleton, and this respondent sets forth said assignment, marked Exhibit C, and makes the same a part of this his answer. And on the next day, namely, April 21st, 1865, the said John Pendleton inserted
89 the day of the month in said blank in said assignment, and on the the same day the said Charles L. Woodman assigned said patent right for Cook county, so purchased as aforesaid, to this respondent, in consideration of the said sum of five thousand dollars so

furnished by him as aforesaid, to be paid to said Pendleton; and a copy of said assignment is hereto annexed as Exhibit D, and made a part of this answer.

And this respondent says that the said assignment from John Pendleton to said Charles L. Woodman, and the said assignment from said Charles L. Woodman to this respondent, were duly recorded by the Commissioner of Patents in his office, at Washington, on the 2d day May, A. D. 1865.

And this respondents denies that said assignments were pretended transfers; but on the contrary, were made in good faith for a valuable consideration and without any fraud, and the same are
90 absolute and unconditional.

And this respondent, further answering, denies upon his information and belief that said Woodman, and upon his own knowledge, that he, this respondent, had any actual notice, knowledge, or information that said Orrin Kendall had any contract of any description at any time for the purchase or the privilege of purchasing said patent right; he admits that both said Woodman and himself knew that said Kendall was manufacturing aerated bread, but were entirely ignorant of any right, or claim of right, beyond that fact, until after said Woodman had procured said assignment and said sum of five thousand dollars had been paid; and this respondent believes from his knowledge of said Kendall, and his manner of doing business, that he was using said process without any license or right to do so, and so informed said Woodman.

91 And this respondent expressly denies that said Kendall has been the means of making respondent rich; but he admits that he was so unfortunate as to have been a partner of said Kendall for a short time, when they, being unable to get along, said Kendall retired from the partnership, and this respondent, as a partner of two sons of said Kendall, continued in the bakery business for some time, which they prosecuted with success.

And this respondent expressly denies that said Kendall ever informed him at any time, or under any circumstances, of the contract with said Pendleton, or explained to him its terms, or the manner of making said bread, or the nett profits to be realized therefrom; and this respondent denies that he entered into a treaty, as alleged in said cross-bill, to enter into business with said Kendall to induce said Kendall to furnish him information in regard to said matters;
92 but this respondents says the truth is, that he proposed about the time stated in said bill, in good faith, to go into the establishment of said Kendall at a salary of twenty-five hundred dollars per annum, and to loan money not exceeding ten thousand dollars, at ten per cent. interest per annum, if said Kendall would take him into the establishment at that salary, and furnish him good paper or accounts as collateral security to the amount furnished or loaned, and after consideration, said Kendall proposed to take this respondent into partnership instead of said arrangement, which he declined, and said Kendall declining the other proposition, the matter fell through.

And this respondent further answering, says that he never had

any correspondence with said John Pendleton, or any one acting on his behalf, and that he never saw the said John Pendleton until on the 20th day of April last, when the said assignment was
93 delivered to said Woodman and the five thousand dollars was paid; and that he did not at the time, or before the time said assignment was made to this respondent, make any statement or representation whatever to the said Pendleton, or to any person, to to be repeated to said Pendleton, in regard to the character or solvency of said Kendall; and this respondent, on his information and belief, denies that said Woodman, before that time, made any such statements or representations; and this respondent denies that said Pendleton was induced or influenced to make said sale and assignment to said Woodman or this respondent by any statement of the said Woodman or this respondent in regard to said Kendall; and this respondent, further answering, says that said Kendall knew, from the sworn testimony of said Pendleton, taken in the presence of said Kendall before Henry W. Bishop, master in chancery, and
94 now on file in this case, that no such representations were made, as alleged in said cross-bill, before the same was sworn to and filed by said Kendall.

And this respondent, further answering, says, on his imformation and belief, that said Kendall did not pay his said note of five hundred dollars for the use of said improvement, when the same became due, nor until the 14th day of June, A. D. 1865, although the same was demanded when the note fell due, and on the 20th day of April, 1865; and that he never signified to said Pendleton his desire to take said patent right under said contract of June 14, 1864, until after it had been sold to said Woodman, and the assignment had been delivered and the money paid therefore; and that he never offered to perform his said contract until the 14th day of June, 1865; and this respondent, further answering, says that said John
95 Pendleton came to the city of Chicago on the 10th day of June, 1865, and still remains, and that this respondent commenced to examine him as a witness in this case on the 12th day of said month, and continued the same until on the 15th, and that said Kendall knew of his presence and attended said examination in person, yet the said Kendall did not offer to pay one cent, or to perform said contract at all until, by the pressure of the evidence, he was apparently compelled to do so; and on the 14th day of June, 1865, at about 4 o'clock in the afternoon, said Kendall, by his attorney, Mr. Grant, interupted the examination, then and there in progress before the master in chancery, and tendered to said Pendleton five hundred and thirty-five dollars in payment of the principal and interest of said note for the license of six months, which was accepted by said Pendleton, and, at the same time, said Grant, in behalf of said Kendall, tendered to said Pendleton, and then to this respond-
96 ent, some money and papers purporting to be promissory notes; but this respondent cannot state how much money, or what the papers were, because he did not look at them, and the same were not read to him.

And this respondent admits that he is now fitting up a house with the proper machinery to manufacture bread by the process secured by said patent in Cook county, and that he proposes to commence the use of the same immediately, but he claims that he has the sole and exclusive right to do so, and that said Kendall is violating the right of this respondent.

And this respondent denies all other matters and things in the said cross-bill contained and not herein already answered, so far as the same are material and necessary to be answered unto, and now, having fully answered, he prays to be dismissed, hence with his reason-
97 able costs in this behalf expended, &c.

JOSEPH M. DAKE.

GOUDY & CHANDLER,
D. C. & J. J. NICHOLS,
Sol's and of Counsel.

STATE OF ILLINOIS,
Cook County, City of Chicago, ss:

Joseph M. Dake, being duly sworn, deposes and says: That he is the defendant in this case; that he has read the foregoing answer to said cross-bill, and that the matter and things therein stated are true, except as to the matters and things stated to be on the information and belief of the respondent, and those he believes to be true.

JOSEPH M. DAKE.

Subscribed and sworn to before me this 22nd day of June, A. D. 1865.

[SEAL.] GEORGE CHANDLER,
Notary Public.

98 "*Exhibit A.*"

It is agreed between John Pendleton, of the city and State of New York, and Orrin Kendall, of the city of Chicago, Cook county, and State of Illinois, that, whereas, the said John Pendleton is the owner by assignment, of the right of Cook county, in the State of Illinois, to all the privileges conferred by letters patent, issued March 9th, 1858, to James Perry, David Fitzgerald, and Horatio Bogart, of the city of New York, for "certain new and useful improvements in the process of raising and preparing dough, which right, so conferred by said letters patent, in the county of Cook, and State of Illinois, the said Orrin Kendall proposes to purchase of said Pendleton, at the sum of sixty-five hundred dollars.

That in consideration of five hundred dollars paid by said Kendall to said Pendleton, the said Kendall shall have the right, the privileges conferred by said patent, and the process therein described, within the whole county of Cook, in the State of Illinois, for
99 the period of six months, from June 14th, 1864, at the end of which period he shall have the privilege of buying the per-

petual right conferred by said letters patent, at the additional sum of six thousand dollars, payable in six equal instalments of six, twelve, eighteen, twenty-four, thirty, and thirty-six months from December 14th, 1864, and bearing interest at the rate of seven per cent., payable annually. If, at the end of said period, said Kendall declines to make the full purchase of said rights for Cook county, as aforesaid, the said Pendleton retains the said five hundred dollars and is released from this obligation. But if said Kendall elects to purchase said right, the said Pendleton shall make a good and sufficient transfer of all the franchises and privileges conferred by said letters patent within and for the county of Cook, in the State of Illinois, to Kendall and his assigns, and said Kendall shall give his six
100 notes for said installments with interest, as aforesaid.

In the want of said Kendall electing to purchase the remainder of the patent right from December 14th, 1864, the interest then accrued on the six thousand dollars will be due and payable at that time.

(Signed) JNO. PENDLETON.
O. KENDALL.

Attest:
JOHN ROUS.
R. P. COATS.

Chicago, June 14th, 1864.

It is understood between John Pendleton and Orrin Kendall that a notice is to be given by said Kendall to said Pendleton, of the determination of said Kendall in relation to fulfilling a certain agreement made and entered into June 14th, 1864; that is to to say, either to decline or continue the fulfillment of said agreement on or before the first day of October next.

(Signed) O. KENDALL.

101 Chicago, June 14th, 1864.

[5-cent U. S. int. rev. stamp.]

"*Exhibit B.*"

Whereas, James Perry, Daniel Fitzgerald, and Horatio Bogart obtained a patent from the government of the United States, dated March 9th, 1858, "for certain new and useful improvements in the process of raising and preparing dough," the title to which, for the county of Cook, and State of Illinois, is vested by assignment
102 in John Pendleton, of New York, which right in Cook county Charles L. Woodman, of Chicago, desires to buy now, said John Pendleton and Chas. L. Woodman have contracted as follows: Said Chas. L. Woodman agrees by May 1st, A. D. 1865, to pay said John Pendleton five thousand dollars, in cash, for the right to said patent for said Cook co., Illinois, said John Pendleton agrees

thereupon, for said sum, to assign all the right, title, and interest of said patent in and for said Cook co. to said Chas. L. Woodman, by a proper written paper assgnment now drawn in blank and ready for signature and delivery, and in the hands of said John Pendleton.

Witness the hands of the parties at Cincinnati, Ohio, April 17th, 1865.

(Signed) JNO. PENDLETON.
CHARLES L. WOODMAN.

Attest:
G. M. LEE.

[5 cent U. S. rev. stamp.]

Endorsed: Fled June 22nd, 1865. Wm. H. Bradley, Cl'k.

103 *Exhibit C.*

Whereas James Perry, Daniel Fitzgerald and Horatio Bogert, obtained a patent from the government of the United States, "dated March 8th, A. D. 1858, for an improvement in raising dough," the title to which patent in and for Cook county, in the State of Illinois, has become vested by assignment in John Pendleton, of New York; and whereas Charles L. Woodman, of Chicago, desires to buy said patent and the right thereto, in said county of Cook, in the State of Illinois; now in consideration of ($5,000,) five thousand dollars in hand paid by Chas. L. Woodman to John Pendleton, I, the said John Pendleton, do hereby sell and assign to said Charles L. Woodman the said patent, and all the right, title, and interest of the patentees so assigned to me in and for said county of Cook, and State of Illinois, to be by said Chas. L. Woodman, his heirs and assigns, held and enjoyed to the full end of the term of said patent as fully
104 as I might have held and enjoyed the same had this sale and assignment not been made.

Witness my hand and seal this 21st of April, A. D. 1865.

[SEAL.] JNO. PENDLETON.

Attest:
G. M. LEE.

[5 ct. stamp.]

U. S. PATENT OFFICE.

Received and recorded May 2, 1865, in Liber T, page 433, of transfers of patent. In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.] D. P. HOLLOWAY,
Com. of Patents.

Exhibit D.

Whereas James Perry, Daniel Fitzgerald, and Horatio Bogert, obtained a patent from the government of the United States, dated March 9th, A. D. 1858, for an "improvement in raising dough," the title to which patent in and for the county of Cook, in the
105 State of Illinois, has become vested by transfer and assignment of the city of Chicago, in the county of Cook, and State of Illinois; and whereas Joseph M. Dake, of said city of Chicago, desires to buy said patent, and the right thereto in said county of Cook, in the State of Illinios; now in consideration of five thousand dollars, ($5,000,) in hand paid by said Joseph M. Dake to Charles L. Woodman, I, the said Charles L. Woodman, do hereby sell and assign to said Joseph M. Dake the said patent and all the right, title, and interest of the patentees so assigned to me in and for the said county of Cook and State of Illinois, to be by the the said Joseph M. Dake, his heirs and assigns, held and enjoyed to the full end of the term of said patent, as fully as I might have held and enjoyed the same had this sale and agreement not been made.

Witness my hand and seal this 21st day of April, A. D. 1865.

[SEAL] C. L. WOODMAN.

Witness:

JOHN E. WOODMAN.

[5-cent revenue stamp.]

106 Endorsed: Filed June 23, 1865. Wm. H. Bradley, cl'k.

107 And on this day, to wit, the 24th day of June, A. D. 1865, in the record of proceedings in said court, in said entitled cause in the following entry, to wit:

Reference to W. H. Bishop, jr., Master in Chancery, to take proofs generally.

JOSEPH M. DAKE
vs.
ORRIN KENDALL. } Chancery.

On motion of the complainant, by his solicitor, it is ordered by the court that this cause be referred to Henry W. Bishop, jr., esq., one of the masters of this court, to take proof generally, and report the same to the court.

And on this day, to wit, the first day of July, A. D. 1865, come the said defendant in original bill, by his solicitors, and files herein his replication to the answer to cross-bill, in said entitled cause, which replication is in words and figures following, to wit:

Def't's replication to compl'ts answer to cross-bill.

In equity before the Hon. Justices of the Circuit Court of the United States, within and for the northern district of Illinois.

The relication of Orrin Kendall, complainant, to the answer of Joseph M. Dake, defendant, to the cross-bill of the above complainant.

108 This repliant, saving and reserving to himself all and all manner of advantage of exception, to the manifold insufficiences of the said answer for replication thereunto, saith that he will aver and prove this said cross-bill to be true, certain, and sufficient in the law, to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law, to be replied unto, confessed and avoided, traversed or denied, is true, all which matters and things this repliant is and will be ready to aver and prove as this hon. court shall direct, and humbly prays as in and by his said cross-bill he has already prayed.

WOODBRIDGE & GRANT,
So'r for complainant in cross-bill.

Endosed: Filed July 1st, 1865. Wm H. Bradley, cl'k.

109 And on this day, to wit, the sixth day of October, A. D. 1865, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

Application for injunction and additional security of defendant overruled.

JOSEPH M. DAKE
vs.
ORRIN KENDALL. } Chancery.

The court having considered, and being now fully advised upon the application of the complainant, by his solicitor, heretofore made, for an injunction, or for additional security of the defendant, herein overruled said application.

And on this day, to wit, the 14th day of December, A. D. 1865 in the record of proceedings of said court in said entitled cause is the following entry, to wit:

Def't's motion for leave to amend answer under advisement.

JOSEPH M. DAKE
vs.
ORRIN KENDALL. } Chancery.

Now comes the parties, by their solicitors, and the defendant, by his solicitor, moves the court for leave to file an amendment to his answer herein, and the court, after hearing the arguments of counsel, and not being fully advised in the premises, takes time to consider.

110 And on this day, to wit, the 19th day of December, A. D 1865, in the record of proceedings of said court in said entitled cause is the following entry, to wit:

Leave to amend answer.

JOSEPH M. DAKE
vs.
ORRIN KENDALL. } In chancery.

The court having considered, and being now fully advised upon the motion of the defendant heretofore entered, for leave to file an amendment to his answer herein, sustains said motion upon the payment by the defendant of all the tax costs herein, and the defendant having paid said costs, leave is given him to file his amendment.

And on this day, to wit, the 19th day of December, A. D. 1865 the said defendant, by his solicitors, files his amendment to his answer herein, in the words and figures following, to wit:

Circuit Court of the United States for the northern district of Illinois.—In Chancery.

Amendment to answer.

JOSEPH M. DAKE
vs.
ORRIN KENDALL.

111 (Amendment to be inserted after the 24th line from the top, and before the fourth line from the bottom of the 23rd page of the answer in said cause filed:)

And defendant, further answering, says that the said James Perry and Elisha Fitzgerald were not the original and first inventors of the process of preparing dough or paste for making bread, cakes, or other farinacious articles of food, by mixing the materials with gas under pressure in a closed vessel, substantially as subscribed in the letters patent granted to James Perry, Elisha Fitzgerald and Horatio Bogart, assignees of James Perry and Elisha Fitzgerald, for improvement in raising dough, dated March 9th, 1858, as a means of leavening or raising the same, as set forth in said letters patent; nor were they the original and first inventors of the process, method, or device of discharging the dough as leavened, from the vessel by the gaseous pressure, as it is required substantially, and for the purpose specified in the aforesaid letters patents; but defendant says that both of said pretended inventions were, prior to the alleged invention thereof by said Perry and Fitzgerald, patented in England, and that letters patent were granted in England for the same improvements so described and claimed by said Perry and Fitzgerald, as aforesaid, to the

112 following persons, and at the following dates, to wit:

To Luke Herbert, dated January 24th, 1833, and numbered

6,370; to George Augustus Robinson and Richard Egan Lee, dated July 10th 1849, and numbered 12,703; and to John Danglish, dated October 1st, 1856, and numbered 2,293, as he is informed and believes.

And defendant says that the drawings and specifiations of the aforesaid patents, so granted, as aforesaid, to Luke Herbert, George Augustus Robinson, Richard Egan Lee, and John Danglish, fully describe and illustrate respectively, a mode of raising dough and discharging the same, substantially identical in principle and mode of operation with the mode described and specified in the letters patent upon which this suit is brought, and that by reason of the premises said last named letters patent are void.

O. KENDALL.

WOODBRIDGE & GRANT,
And S. S. FISHER,
Sol's, and of Counsel for Defendant.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

On this 12th day of December, A. D. 1865, before me, personally appeared the above-named Orrin Kendall, and made oath that he has heard read the above amendment to his answer in said cause
113 by him subscribed and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters as are therein stated to be on his information or belief, and as to those matters he believes it to be true.

Sworn and subscribed to before me this 12th day of Dec. 1865.

E. A. DRUMMOND,
U. S. Com'r.

Endorsed: Filed Dec. 19, 1865. Wm. H. Bradley, Cl'k.

114 And on this day, to wit, the 27th day of December, A. D. 1865, the said defendant, in pursuance of the requirement of the court, filed a further bond in the additional sum of $5,000, which bond is in the words and figures following, to wit:

Additional bond in $5,000.

Know all men by these presents, that we, Orrin Kendall, as principal, and Edward K. Kendall, Henry E. Seelye, and Edwin P. Skinner, as sureties, all of the city of Chicago, in the county of Cook, and State of Illinois, are held and firmly bound unto Joseph W. Dake, of the same place, in the penal sum of five thousand dollars, to be paid to the said Dake, his executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, jointly and severally, and our respective executors and administrators, firmly by these presents.

Sealed with our seals and dated at Chicago, this 27th day of December, A. D. 1865.

The condition of this obligation is such, that whereas the Circuit Court of the United States, within and for the northern district of Illinois, in a certain cause in equity therein pending, wherein said Joseph W. Dake was complainant, and said Orrin Ken-
115 dall was defendant, on the 19th day of June, A. D. 1865, ordered that an injunction issue against said defendant, restraining him as prayed for in said complainant's bill of complaint, unless said defendant should enter into bond to said complainant in the penal sum of five thousand dollars, with security to be approved by the court, conditioned that said defendant pay and satisfy any decree which said court might render in the premises.

And whereas said defendant complied with said order and entered into a bond in the sum named, with security, which was duly aproved by the court, which bond is still on file in said cause and in full force; and whereas, said court now require from said defendant a further bond in the additional sum of five thousand dollars upon the same condition:

Now, therefore, if the above bounden Orrin Kendall shall well and truly pay and satisfy any decree which said court may render against him in said suit, then this obligation to be void, otherwise to remain in full force.

[SEAL.]	ORRIN KENDALL.
[SEAL.]	HENRY E. SEELYE.
[SEAL.]	E. S. SKINNER.
[SEAL.]	E. K. KENDALL.

Attest:
116 WALTER BUTLER.

Approved. THOMAS DRUMMOND.

Endorsed: Filed Dec. 27, 1865. Wm. H. Bradley, Cl'k.

117 And on this , to wit, the 20th day of February, A. D. 1866, in the record of proceedings of said court in said entitled cause is the following entry, to wit:

Order extending time to take proofs, &c., as to English patents.

JOSEPH M. DAKE
vs.
ORRIN KENDALL. } Chancery.

By agreement of parties, by their solicitors, copies of the English patents of Robinson & Lee, and of John Danglish, now on file herein, are to be admitted in evidence on the hearing of this cause, and the time for taking proof herein is further extended twenty days.

And on this day, to wit, the 22nd day of February, A. D. 1866, in the entry of proceedings in said court in said entitled cause, is the following entry, to wit:

Chas. F. Wolcott, of Mass., appointed examiner.

JOSEPH M. DAKE
vs.
ORRIN KENDALL. } Chancery.

By agreement of the parties, by their solicitors, it is ordered by the court that Charles F. Wolcott, of Boston, in the State of Massachusetts, be, and he hereby is, appointed an examiner under
118 the amended sixty-seventh rule in equity of the Supreme Court to take proof herein, and report the same to the court.

And on this day, to wit, the 9th day of May, A. D. 1866, in the entry of the proceedings of said court in said entitled cause is the following entry, to wit:

Decision on defendants motion for leave to file amendments to cross-bill, and amendment to answer to original bill reserved, and cause set down for hearing and partly heard.

JOSEPH M. DAKE
vs.
ORRIN KENDALL. } Chancery.

Now comes the defendant, by Woodbridge & Grant, his solicitors, and move the court for leave to file an amendment to his cross-bill, and also an amendment to his answer to the original bill herein; and thereupon, the court directs the clerk to file said amendments for identity, and by consent the question of the right of said defendant to make said amendments is reserved by the court; and now come the parties by their attorneys, and thereupon this cause is set down for hearing upon the bill, cross-bill, and answers thereto, replications, exhibits, and proofs on file herein, and after hearing a part of
119 the arguments of counsel, the hour of adjournment having arrived, the further hearing is postponed until to-morrow morning.

120 And on this day, to wit, the 9th day of May, A. D. 1866, was filed in the office of the clerk of said court the amendment to the cross-bill in said entitled cause, in the words and figures following, to wit:

Circuit Court of the United States for the northern district of Illinois, in equity.

Amendment to cross-bill.

ORRIN KENDALL
vs.
JOSEPH M. DAKE. } Amendments to cross-bill.

Directly after "United States," in the 14th line from the bottom of the 1st page, erase the word "being," and insert "claiming to be,"

and in the 13th line from the bottom of said 1st page erase "a" before "new and useful," and insert "an alleged;" and in the same line erase "not" after improvement, and insert "alleged not to have been," and between the 4th and 5th lines from the bottom of the last page but one of said bill, insert "and your orator further sheweth unto your honors that said alleged improvement, as he is informed and believes, is neither new nor useful, and that the said patent therefor is worthless and void. But he insists that if the court
121 should decree otherwise, he is entitled to the same as aforesaid," and directly before the prayer for an injunction on the last page of said cross-bill, insert "and if the court shall decide said patent to be valid."

O. KENDALL.

Subscribed and sworn to before me this 9th day of May, 1866.
E. A. DRUMMOND,
U S. Com'r.

Endorsed: Filed May 9th, 1866. Wm. H. Bradley, cl'k.

And on this same day, last aforesaid, was filed in the office of the clerk of said court, the defendant's amendment to his answer to the original bill on file in said cause, which said amendment is in the words and figures following to wit:

Circuit Court of the United States for the northern district of Illinois, in equity.

Def't's amendment to answer to original bill.

JOSEPH M. DAKE
vs.
ORRIN KENDALL. } Amendments to answer original bill.

122 Insert directly after the 13th line of the 23 page of said answer "and this defendant says that said Pendleton did not again return until about the 14th day of June, 1865, when this defendant, by his agent, tendered to said Pendleton all money, both principal and interest, in arrear and unpaid upon the said contract between him and this defendant; also the six notes required by said contract, all dated December 14th, 1864, all duly stamped, all executed by this defendant, each for the principal sum of $1,000, and payable respectively in 6, 12, 18, 24, 30 and 36 months from said date, with interest at the rate of seven per centum per annum, payable annually, all payable to the order of said Pendleton; also the amount of said note payable in six months, with interest to said date of tender, and requested said Pendleton specifically to perform his aforesaid contract with this defendant, and to convey to him said patent right, but the said Pendleton absolutely refused so to do, or to accept said tender, except the amount of said $500 note which he did accept. And thereupon defendant, at the same time and place, tendered the same

money tendered to said Pendleton to said Dake, except the afore-
123 said amount of said $500 note; and likewise tendered to said Dake 6 notes, in all respects similar to those above described, as tendered to said Pendleton, except that they were payable to the order of said Dake; and also tendered to said Dake the amount of said six months note and interest, and demanded of said Dake an assignment of said patent right to this defendant, but said Dake absolutely refused to make the same. And thereupon this defendant filed a bill against the said Pendleton, Dake & Woodman, alleging the facts aforesaid, offering specially to perform his said contract, and praying the court to require, among other things, the said Pendleton specifiically to perform the same, which bill last-named was filed in the Circuit Court of Cook county, and is still pending there.

O. KENDALL.

Subscribed and sworn to before me this 9th day of May, 1866.

E. A. DRUMMOND,
U. S. Com.

Endorsed: Filed May 9th, 1866. Wm. H. Bradley, cl'k.

124 And on this day, to wit, the 10th day of May, A. D. 1866, in the record of proceedings in said court in said entitled cause is the following entry, to wit:

Cause heard and taken under advisement.

JOSEPH M. DAKE
vs.
ORRIN KENDALL. } Chancery.

Now come again the parties, by their solicitors, and after hearing the concluding arguments of counsel, the court, not being sufficiently advised in the premises, takes time to consider.

And on this day, to wit, Thursday, 9th August, A. D. 1866, in the record of the proceedings of said court, in the said entitled cause is the following entry, to wit:

Final hearing and decree.

JOSEPH M. DAKE
vs.
ORRIN KENDALL, } Chancery original bill.
and
ORRIN KENDALL
vs. } Cross-bill.
JOSEPH M. DAKE.

125 This cause having been brought to a final hearing, upon the pleadings and proofs, and counsel for the respective parties in said original and cross-bill having been heard, and the same having duly considered by the court, it is found and hereby ordered,

adjudged and decreed, that the letters patent, No. 19,610, granted unto said James Perry, Daniel Fitzgerald and Horatio Bogart, March ninth, eighteen hundred and fifty-eight, it is a good and valid patent, being the patent referred to in the complainant's bill, and that James Perry and Elisha Fitz-gerald were the original and first inventors or discoverers of the improvement described and claimed in said patent, and that the said complainants, on the twentieth day of April, A. D. eighteen hundred and sixty-five, did obtain by assignment the sole and exclusive right to said letters patent and invention or discovery for and in the county of Cook and State of Illinois, as in the said complainant's bill is alleged; and also that the said defendant has infringed upon the said patent, and upon the exclusive rights of said complainant for and in said county of Cook under the same.

And it is further ordered, adjudged, and decreed that the cross-bill of the said defendant plead in this case be dismissed.

126 And it is further ordered, adjudged, and decreed that the complainant, Joseph M. Dake do recover of the defendant, Orrin Kendall, the profits, gains, and advantages which the said defendant has received or made, or which has arisen or accrued to him from said infringment of the said patent, by the use or sale in said county of Cook of the improvements described and secured by the said letters patent, at any and all times since the twentieth day of April, A. D. eighteen hundred and sixty-five, and the damages which the said complainant has sustained by such infringement by the said defendant since the date last aforesaid.

And it is further ordered, adjudged, and decreed that the said complainant do recover of the defendant his costs and charges in this suit to be taxed.

Reference to Master to state accounts, &c.

And it is further ordered, adjudged, and decreed that it be referred to J. Tilden Moulton, one of the master's of this court, residing in the city of Chicago, to ascertain, take, and state and report to the court an account of the gains, profits, and advantages which the said defendant has received, or which has arisen or accrued to him from infringing the said exclusive rights of the said complainant,

127 under said patent, in the county of Cook, and State of Illinois, by the use or sale of said improvement, patented in said letters patent, since the twentieth day of April, A. D. eighteen hundred and sixty-five, and the damages which the said complainant has sustained from such infringement since the date last aforesaid.

And it is further ordered, adjudged, and decreed that the complainant, on such accounting, have the right to cause an examination of said defendant ore tenus or otherwise, and also the production of his books, vouchers and documents, and that the said defendant attend for such purpose before said master, from time to time, as said master shall direct; and also that said master, upon such accounting, hear such oral or other competent testimony as either party shall produce.

Order for perpetual injunction.

OCT. 2*nd*, 1866.

And it is further ordered, adjudged, and [and]decreed that a perpetual injunction be issued on the second day of October next, in this suit against the said defendant, according to the prayer of the bill.

128 And on this day, to wit, the 28th day, August, A. D. 1866, was filed in this office of the clerk of said court, the bond of the said defendant, in the words and figures following, to wit:

New bond of the defendant releasing former sureties.

28TH AUG'ST, 1866.

Whereas, Orrin Kendall, as principal, and William Blair and Claudius B. Nelson, as sureties, did on the twenty-first day of June, A. D. 1865, execute and deliver unto Joseph M. Dake their certain bond in the penal sum of five thousand dollars, with certain conditions thereunder written; and whereas said bond was duly filed in a certain cause then pending in the Circuit Court of the United States, within and for the northern district of Illinois, wherein said Joseph M. Dake was complainant, and the said Orrin Kendall was respondent, said bond being filed in said cause on the said twenty-first day of June A. D. 1865; and whereas, the said Dake and Kendall are both desirous of releasing and discharging the said Blair and Nelson from all liability by reason of their signing said bond, as sureties, as aforesaid, and substituting in the place thereof a new bond in the like penal sum, with like conditions thereunder written, wherein
129 Edward K. Kendall and James S. Kendall shall be substituted, in the place of said Blair and Nelson, as sureties, therein; and whereas the said Edward K. Kendall and James S. Kendall are desirous of so becoming sureties in the aforesaid new and substituted bond; and whereas the said Dake has this day executed and delivered to the said Blair and Nelson a full release and acquitance, from all liability, on account of their so signing said bond as sureties therein; and whereas the following described bond is made and executed for the purpose of so substituting a new bond in the place of the aforesaid bond, and to have the same effect, and to relate back to the date of the execution and filing of the aforesaid old bond, and to impose the same obligations and liabilities on the said Orrin Kendall, Edward K. Kendall, and James S. Kendall, as may have been, or now are, imposed on the said Orrin Kendall and said Blair and Nelson, and are to incur the same penalties and obligations which they would have incurred had they, the said Orrin, Edward K., and James S. Kendall, signed and executed the aforesaid old bond in the name and place of the said Orrin Kendall, William Blair, and Claudius B. Nel-
130 son:

Now, therefore, know all men by these presents, that we, Orrin Kendall, as principal, and Edward K. Kendall and James S. Kendall, as sureties, all of the city of Chicago, in the county of Cook

and State of Illinois, are held and firmly bound unto Joseph M. Dake, of the same place, in the penal sum of five thousand dollars, lawful money of the United States, to be paid to the said Dake, his executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, jointly and severally, and our respective executors and administrators, firmly, by these presents. Sealed with our seals and dated at Chicago this twenty-eighth day of August, A. D. 1866.

The condition of this obligation is such, that whereas the Circuit Court of the United States within and for the northern district of Illinois, in a cause in equity therein pending, wherein the said Joseph M. Dake was complainant, and the said Orrin Kendall was defendant, on the 19th day of June, A. D. 1865, ordered that an injunction issue against said defendant, restraining him as prayed for in said complainant's bill of complaint, unless said defendant should enter
131 into a bond to said complainant in the penal sum of five thousand dollars, with security, to be approved by said court, conditioned that said defendant pay and satisfy any decree which said court might render against him in the premises.

Now, therefore, if the above bounden Orrin Kendall shall well and truly pay and satisfy any decree which said court may have rendered, or may hereafter render, against him in the said suit, and shall fully pay and discharge all the obligations and liabilities, if any there be, which he, the said Orrin Kendall, as principal, and the said Blair and Nelson, as sureties, may have incurred by reason of their having executed the aforesaid mentioned bond, from the date of the execution thereof to the date of these presents, then this obligation to be null and void, otherwise to be and remain in full force and virtue.

[SEAL.] O. KENDALL.
[SEAL.] EDWARD K. KENDALL.
[SEAL.] JAMES S. KENDALL.

Endorsed: Filed Aug. 28, 1866. Wm. H. Bradley, cl'k.

132 And on this day, to wit, the second day of October, A. D. 1866, in pursuance of said executed order, was issued a writ of injunction, and filed in said clerk's office on the 9th of October following, which injunction writ, with return thereon, is in the words and figures following, to wit:

Circuit Court of the United States of America, Northern District of Illinois.

Injunction writ.

THE UNITED STATES OF AMERICA, *ss:*

OCT. 2D, 1866.

To ORRIN KENDALL, and to your counsellors, attorneys, solicitors, trustees, and agents, and to each and every of them, greeting:

Whereas, it hath been represented to the judges of our Circuit Court of the United States for the northern district of Illinois, in

chancery sitting, on the part of Joseph M. Dake, complainant, in his certain bill of complaint, exhibited in our Circuit Court, on the chancery side thereof, before the judges of said court, against you, the said Orrin Kendall, to be relieved, touching the matters complained of. In which said bill it is stated, among other things, that you are combining and confederating with others to injure the complainant touching the matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience. And it being ordered that a writ of injunction
133 issue out of said court upon said bill, enjoining and restraining you, and each of you, as prayed for in said bill, we, therefore, in consideration thereof, and of the particular matters in said bill set forth, do strictly command you, the said Orrin Kendall, your counsellors, attorneys, solicitors, trustees, and agents, and each and every of you, that you do absolutely desist and refrain from using, or causing to be used, the improvement in the process of raising and preparing dough for baking, in the letters patent, mentioned in the bill of complaint herein, to wit, letters patent, No. 19,610, granted unto James Perry, Daniel Fitzgerald, and Horatio Bogart, March 9th, 1858, by the United States; and from using or causing to be used any process of preparing dough for baking, substantially like and upon the plan and principle of said improvement in said letters patent described, until this honorable court, in chancery sitting, shall make other order to the contrary. Hereof fail not under the penalty of what the law directs.

To the marshal of the northern district of Illinois to execute and return in due form of law.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this second day of October, in the year of our Lord one thousand
134 eight hundred and sixty-six, and of our independence the 91st year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Proof of service.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Know all men by these presents, that I have appointed, and by these presents do appoint, S. H. Tourtelotte my true and lawful deputy to execute the annexed writ, (Joseph M. Dake *vs.* Orrin Kendall,) and to make true return thereon, according to law.

[SEAL.] J. R. JONES,
United States Marshal of the Northern District of Illinois.

I have, this third day of October, A. D. 1866, executed the annexed writ, (Joseph M. Dake *vs.* Orrin Kendall,) by reading the same to and in the presence and hearing of Orrin Kendall, therein named, and delivering to him personal a true copy thereof.

J. R. JONES,
United States Marshal of the Northern District of Illinois.
By S. H. TOURTELLOTTE,
Special Deputy.

S. H. Tourtellotte, being first duly sworn, deposes and says: That he served the annexed writ as stated in the foregoing return. Sworn to before me this 4th day of October, A. D. 1866.

P. A. HOGUE, *U. S. Com.*

[5 cent stamp cancelled.]

135 And which is endorsed: Filed Oct. 9th, A. D. 1866. Wm. H. Bradley, clerk.

And here follows the stipulation of the parties, substituting the name of Henry W. Bishop, master in chancery in the decree, as the person to whom the same shall be referred, under the decree entered Aug. 9, 1866.

Stipulation changing reference to H. W. Bishop, Master.

JOSEPH M. DAKE, *vs.* ORRIN KENDALL, } In chancery.

It is stipulated and agreed that the name of Henry W. Bishop, master in chancery, may be substituted in the decree as the person to whom the case shall be referred, under the decree entered Aug. 9, 1866.

GOUDY & CHANDLER,
Sol's. for Compl's.
WOODBRIDGE & GRANT,
For Def't.

136 And on this day, to wit, the 28th day of December, A. D. 1866, was filed in the office of the clerk of said court, the report of Henry W. Bishop, jr., which master's report is in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Illinois.

Master's report.

JOSEPH M. DAKE *vs.* ORRIN KENDALL. } In chancery.

DEC'R 28*th*, 1866.

In pursuance of an order made in this court, on the 9th day of August, A. D. 1866, in the above-entitled cause, by which it was referred to the undersigned a master in chancery of said court.

First. To report to the court an account of the gains, profits, and advantages which the said defendant has received, or which have arisen or accrued to him from infringing the exclusive rights of the complainant herein, under the patent, (mentioned in said decree,) in the county of Cook and State of Illinois, by the use or sale of

said improvement, patented in the letters patent (described
137 therein) since the 20th day of April, A. D. 1865.

And second. The damages which the said complainant has sustained from said infringement since the date last aforesaid.

I hereby report that upon an examination of the case I find from the evidence:

First. That the gains, profits, and advantages which the said defendant has received, or which have arisen or accrued to him from infringing the said exclusive rights of the complainant under said patent (in the county of Cook aforesaid,) by the use or sale of said improvement, since the 20th day of April, A. D. 1865, amount to the sum of five thousand one hundred and sixty-five and 54-100 dollars ($5,165 54.)

Second. That the damages which the said complainant has sustained from such infringement since the date last aforesaid amounts to the sum of eleven thousand three hundred and twenty-three dollars ($11,323.)

All of which is respectfully submitted.

Chicago, Dec. 28, 1866.

HENRY W. BISHOP, Jr.
Master in Ch'y of Cir. Ct. of U. S.,
Nor. Dist. of Illinois.

[5 cent stamp, cancelled.]

138 And which master's report is endorsed: Filed Dec. 28, 1866. Wm. H. Bradley, cl'k.

And afterwards, to wit, on the 2d day of January, A. D. 1867, was filed in the office of the clerk of said court the defendant's exceptions to the master's report on file herein, which exceptions are in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Illinois.

Defendant's exceptions to master's report.

JOSEPH M. DAKE
vs.
ORRIN KENDALL. } In chancery.

Exceptions taken by the said defendant in the said bill of complaint named to the report of Henry W. Bishop, jr., one of the masters of said court, to whom the said cause was referred by stipulation made in pursuance of the order entered in said cause, August 9th, 1866.

1st exception. For that the said master hath, in and by
139 his said report, certified that the gains, profits, and advantages which the said defendant has received, or which have arisen or accrued to him, from infringing the alleged exclusive rights of the complainant under said patent, (in the county of Cook afore-

said,) by the use or sale of said improvement since the 20th day of April, A. D., 1865, amount to the sum of five thousand one hundred and sixty-five dollars and fifty-four cents, ($5,165 54-100.) Whereas, the said master should have found that the said defendant received no gains, profits, or advantages from the alleged infringement.

2d exception. For that the said master hath, in and by his said report, certified that the damages which the said complainant has sustained from such infringement since the date last aforesaid amounts to the sum of eleven thousand three hundred and twenty-three dollars ($11,323.) Whereas the said master should have certified that complainant sustained no damage from the alleged infringement. First. Because complainant sustained no damage. Second. Because the measure of damages is the profit realized by defendant, and defendant in fact realized no profit.

140 Wherefore the said defendant excepts to the said master's report, and humbly appeals therefrom to the judgement of this honorable court.

WOODBRIDGE & GRANT,
Sol'rs for Defendant.
ORRIN KENDALL.

Which is endorsed: Filed January 2d, 1867. Wm. H. Bradley, cl'k.

And on this day, to wit, the 9th day of January, A. D. 1867, in the record of proceedings of the said court in said entitled cause is the following entry, to wit:

Defendant's exceptions to master's report taken under advisement.

JOSEPH M. DAKE *vs.* ORRIN KENDALL and ORRIN KENDALL *vs.* JOSEPH M. DAKE. } Chancery.—Original bill. Cross-bill.

Now come the parties by their solicitors, and now comes on to be heard the exceptions of the defendant to the report of the master filed herein, on the twenty-eighth day of December last,

141 and the court after hearing the arguments of counsel, takes the same under advisement.

And on this day, to wit, the 30th day of November, A. D. 1867, in the record of proceedings of said court in said entitled cause is the following entry, to wit:

Defendant's exceptions to master's report sustained in part.—Order for payment of balance.—Appeal allowed.

JOSEPH M. DAKE *vs.* ORRIN KENDALL. } Chancery.

This cause coming upon the exceptions of the defendant to the report of the master in chancery, and the court being now sufficiently

advised in the premises, doth order, adjudge, and decree that said exceptions be sustained to so much of said report as finds the amount of damages suffered by the complainant, and in part to the amount fixed and reported as profits and gains made by the defendant, so as to reduce the same twenty per cent on the sum so reported.

And it is further ordered, adjudged, and decreed that the defendant pay to the complainant within ten days the sum of four thousand one hundred and thirty-two dollars and forty-four cents, being the amount reported by the master, less twenty per cent., for the gains and profits made by the said defendant from April twentieth,
142 eighteen hundred and sixty-five, to August ninth, eighteen hundred and sixty-six, from the use of the patent owned by the complainant, and described in the bill of complaint herein, together with interest at the rate of six per cent. per annum. And it is further ordered, adjudged, and decreed that the defendant pay the costs herein taxed at · dollars and cents, and in default of the payment of said sum and interest and costs, or any part thereof, that execution may issue therefor as in cases at law.

And thereupon, the defendant, by his solicitor, prays an appeal to the Supreme Court of the United States, which is granted by the court, upon the defendant entering into bond in the sum of six thousand dollars with security, to be approved by the court.

143 And on this day, to wit, the 30th day November, A. D. 1867, was filed in the office of the clerk of said court, the certificate of evidence in said entitled cause, which certificate is in the words and figures following. to wit:

Circuit Court in Chancery.

Certificate of evidence.

JOSEPH M. DAKE
vs.
ORRIN KENDALL.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss.*

On the hearing of the issues in this case, at the final hearing on the day of , 1866, the complainant, Joseph M. Dake, in support of the issues on his part, offered and read in evidence the following evidence, to wit:

Complainant's evidence.

1. Depositions of John Pendleton and Henry Town, with the exhibits thereto attached, taken before Bishop, master, June 13 & 14, 1865, which are as follows, to wit.

Circuit Court of the United States, [of the United States,] Northern District of Illinois.—In chancery.

144 *Depositions of John Pendleton and Henry Town, June* 13 and 14, 1865.

JOSEPH M. DAKE
vs.
ORRIN KENDALL.

I, Henry W. Bishop, Jr., a Master in Chancery of said court, do hereby report that, in pursuance of a notice in said case, and the agreement of counsel, I was, on the 13th day of June and the days hereinafter mentioned, and subsequent thereto, attended by W. C. Goudy esq., and D. & J. Nichols, solicitors for the complainant, who produces before me John Pendleton and Henry Town, witnesses in said case on the part of the complainants, and [and] by Messrs. Woodbridge & Grant, solicitors for the defendant; and the said John Pendleton and Henry Town, having been by me first duly cautioned and sworn to make true answers to such questions as should be put to them under the direction of the master, upon examination, made answers as follows:

145 Int. 1. What is your name, age, and residence?

My name is John Pendleton. I reside in the city of New York, and am sixty-seven years of age.

Int. 2d. Are you acquainted with the parties to this suit; which, and either of them, and how long have you known them?

Ans. I have known the defendant since last June, and the complainant since last month.

Int. 3d. Did you make a contract with said defendant in relation to a patent for the manufacture of aerated bread at any time; and if so what was that contract?

Ans. There were two of those contracts, though together they constituted one. I annex them herewith, and mark them "Exhibit A and B;" they were both executed at the same time.

Int. 4. How did the second of said contracts come to be executed?

Ans. It was forgotten by the writer in making the first, and is a part of the first agreement; that is, the first was intended to
146 include it.

Examination adjourned to June 14, at 10, A. M.

Examination resumed.

JUNE, 14, 1865.

Int. 5. Who drew the contracts marked Exhibit "A and B" mentioned heretofore? and state if they were drawn and executed at the same time, and all the facts in relation to the same.

Ans. The chief clerk of Mr. Kendall. I think they were drawn and executed at the same time.

Int. 6. Were you in the city of Chicago subsequent to the execution of said contract? and if yea, when, and for what purpose?

(Objected to.)

I was here on the sixth day of October and remained four days. I came for the purpose of receiving an answer to the agreement I had made with Mr. Kendall.

147 Int. 7. State what occurred at that time?

Ans. I asked, according to the agreement, what Mr. Kendall had concluded; whether he was ready to purchase the patent right according to agreement. He said he could not decide, in consequence of the absence of his son; that he had taken a fancy to get married and had been gone two months.

Int. 8. Did he at that time ask or claim further time?

(Objected to.)

Ans. We talked on that subject, but I don't think he claimed further time.

Int. 9. Was anything paid, or proposed to be paid, by Mr. Kendall on an extension?

(Objected to.)

Ans. Nothing whatever.

Int. 10. Did you at that time request the defendant to make further attempts or experiments?

148 (Objected to.)

I did not; but I did give him some advice.

Int. 11. What was that advice?

Ans. It was that he should go with me where the bread was properly made and learn it.

Int. 12. Have you been in Chicago at any time since the time mentioned by you in October last; and if so, when?

Ans. Not until the day when I made the assignment of the right to Mr. Woodman; it was on the 20th of April last.

Int. 13. Have you seen the defendant at any other times than those mentioned in October and April, since the 14th day of June 1864?

Ans. At no other times.

Int. 14. Have you ever made any contract or agreement with the defendant either in writing, or verbally, since the 14th day of June, 1864.

149 (Objected to.)

Ans. None, whatever.

Int. 15. Was any other papers or writing executed by the defendant on the 14th day of June, 1864, than the two papers you have specified; and if there was, will you furnish the master a copy of the same?

There was a note for five hundred dollars at six months. I hereto annex a copy of the same, and mark it "Exhibit C."

Int. 16. Did you accept the note as cash?

Ans. The agreement was not cash but the note.

Int. 17. What was the consideration of the note?

Ans. The use of the patent for six months from that date.

Int. 18. Had the improvement specified in the letters patent been reduced to practical use before the 14th day of June 1864; and if yea, state where and to what extent?

150 During the four years preceding it had been put in use in various localities—Milwaukee was one—and that occurred in the spring of 1861; Buffalo at the same time. Both cities are now in operation and understood that there were various others—Boston and New York—the latter place the earliest; and there were others—Philadelphia and New Orleans.

Int. 19. Had there been any failures in any of these places to make good bread, according to the rule laid down in the specifications attached to the patent?

Not that ever I heard of. I might say there had not been.

Int. 20. When did A. B. Latta & Co., of Cincinnatti, and Alvord & Co., of St. Louis, obtain the right to use the improvement?

Ans. My present impression is, that the arrangement for Cincinnatti occurred in the fall of 1863, and for St. Louis about six months before that time, I think.

Int. 4. Had any controversy arisen with them, or either of
151 them, in regard to the value of the improvement, before June 14, 1864?

(Objected to.)

Ans. I never heard of any.

Int. 22. Did you propose to the defendant, before the making of the written contract of June 14, 1864, to procure for him the necessary machinery and to assist to put the same in running and practical operation?

Ans. No, sir; I did not.

Int. 23. State what was said, if anything, either before, at the time, or after, the making of the contract in June, 1864, in regard to procuring machinery for the defendant.

Ans. After the contract was made the defendant consulted me on that subject. I told him as his time was short, he had better obtain second-hand articles, as his time would be occupied in making them. I said further, I would enquire on my way home at the various establishments for surplus articles of that kind.

152 Int. 24. What did you afterwards do in regard to machinery for the defendant?

Ans. I found in the possession of Marvin, safe-maker, in New York, a lot of those things, second-hand, for sale; they were in Pittsburg. Mr. Marvin furnished a list of the prices, and I sent it to the defendant, and I believe he obtained those articles.

Int. 25. Has the defendant ever paid you anything, or offered to pay you anything since the 14th of June, 1864, for the use of said improvement?

Ans. He never has.

Int. 26. Have you ever demanded payment of the note for $500? If so, when?

Ans. William Turner, of Cincinnatti, presented the note to him on the day it was due. He also induced a friend of his to receive the note and endeavored to collect it. Is was returned to me unpaid. I presented it to him on the 20 of April last, and was told that he had strained his bank account and could not pay it.

153 Int. 27. Has the defendant ever offered to execute the notes specified in the contract of June 14, 1864, to the amount of $6,000, or any of them?

Ans. No, sir; he has not.

Int. 28. Did the defendant notify you of his decision on or before the first day of October, 1864, as to whether or not he would purchase the improvement?

Ans. No, sir; he did not.

Int. 29. Has he ever notified you in any way, at any time, that he would take the improvement for Cook county, according to the terms of the written contract of June 14, 1864?

Ans. He has not in any way, or at any time.

Int. 30. Did you propose, on the 20th of April last, to call on the defendant the next day, and consumate the arrangement specified in the contract of June 14, 1864?

Ans. No, sir. I proposed to call upon him, if he thought he
154 should be able to pay that note; but he said he could not.

Int. 31. For what purpose did you call on the defendant at that time?

(Objected to.)

Ans. Simply to offer him the note for payment.

Int. 32. What was said, if anything, at that time in regard to the purchase, by the defendant, of said improvement for use in Cook county?

Ans. Not a word.

Int. 33. Look at the contract now exhibited to you between John Pendleton and Charles L. Woodman, dated April 17, 1865, and marked "Exhibit D," and state whether that contract was executed by you.

Ans. I have examined said contract; it was executed by me and by Charles L. Woodman.

Int. 34. Did you make an assignment of the said patent for said improvement in Cook county, Illinois, in pursuance of said
155 contract? If so, when?

Ans. I did, on the 20th of April; I think 1865.

Int. 35. Where was the assignment prepared, and by whom?

Ans. It was prepared by Geo. M. Lee, an attorney, of Cincinnatti.

Int. 36. At what time was it prepared and signed by you?

Ans. April 17, 1865.

Int. 37. Were any blanks left in said assignment at said time? and if so, what?

(Objected to.)

Ans. One for the date.

Int. 38. Look at the paper now shown you, marked "Exhibit E," and state whether or not said paper is the assignment you alluded to?

Ans. It is the same.

156 Int. 39. Are you acquainted with the handwriting of the subscribing witness, G. W. Lee?

Ans. I am.

Int. 40. Is this his signature to the assignment?

(Objected to.)

Ans. It is his.

Int. 41. Is that his signature to the contract, marked "Exhibit D?"

Ans. It is his signature.

Int. 42. Where does the said George M. Lee reside?

Ans. In Cincinnatti, Ohio. His office is at 53 Third street.

Int. 43. When did you deliver said assignment to the said Charles L. Woodman?

Ans. On the evening of the 20th of April, 1865.

Int. 44. Did said Charles L. Woodman pay you any consideration therefor? and if so, how much and when?

157 Ans. I received five thousand dollars for the assignment at the time I made and delivered the assignment.

Int. 45. When did you fill up the blank for the date to the assignment, (the words,) "21st of April?"

Ans. On the morning of that day ("21st April.")

Int. 46. Why was not the same filled up when the assignment was delivered?

Ans. It was forgotten.

Int. 47. Did you see the defendants after your arrival in Chicago, in April last, before you had delivered the assignment to Woodman and received the money?

Ans. No, sir.

Cross-examinvtion of Mr. Pendleton by Mr. Grant.

Cross-int. 1. State how long you have resided in the city of New York, on what street or streets, naming the number or numbers.

158 Ans. I have resided in the city of New York nearly sixty years; the last fifteen of them I have lived at No. 4 west 22d street; seventeen years before that, corner of Hubert and Hudson.

Cross 2d. Will you state when you first met the complainant, Dake, and also Charles L. Woodman?

Ans. I met Mr. Dake on the 20th day of last [of last] April, at the bakery, near the post office. Mr. Woodman I saw at his house, in 1864.

Cross 3. Will you state when and where you next saw Woodman, after the times referred to, at his house?

Ans. On Monday, the 17th day of April, 1865, at the post-office, in Cincinnatti.

Cross 4. Prior to the day last named, had you had any correspondence of any kind touching this patent process of making aerated bread with either Dake or Woodman? If yea, will you produce all of the letters received from them, or either of them?

159 Ans. No correspondence; but I saw Mr. Woodman on that subject, as I stated before, (in 1864.)

Cross 5. At the time at which you saw Mr. Woodman, in 1864, on this subject, was it prior to your contract with Mr. Kendall?

Ans. It was.

Cross 6. Why did you state in your direct examination that you had known the complainant since last month?

Ans. I stated correctly that I had known him since last month. It was on the 20th of April that I first knew him.

Cross 7. When you came to Chicago, on the 20th of April last, at what time in the day did you arrive?

Ans. It was about 12 o'c. m., I think.

Cross 8. Prior to your arrival on that day, at the time you mention, did you see, or had you seen, Mr. Dake or Mr. Woodman?

Ans. I had not; no, sir.

160 Cross 9. Did you see Mr. Woodman on that day, prior to his arrival at 12 o'c. at noon, at the time you arrived?

Ans. I did not see him prior to my arrival.

Cross 10. In whose handwriting are "Exhibits A and B?"

Ans. This man, Bond, a clerk of Mr. Kendall at that time.

Cross 11. Under whose instructions, or by whose dictation, was said "Exhibit A" drawn?

Ans. Copied in most part from one drawn up by Mr. Whittlesey, of St. Louis, one that I used before.

Cross 12. Have you now in your possession or control the contract of Mr. Whittlesey, from which this was taken?

Ans. I believe so; if I have, it is in New York.

Cross 13. Was that contract of Whittlesey drawn in pencil or writing?

161 Ans. It was a regular matter between Mr. Alvord, of St. Louis, and myself; and, of course, in writing.

Cross 14. Was that part of the contract of June 14, 1864, found in "Exhibit D," also a part of the contract which Whittlesey drew, and from which "Exhibit A" was drawn?

Ans. I think not. It strikes me that this was drawn at the time by Mr. Bond.

Cross 15. Will you state again why the said contract of June 14th was drawn on two separate pieces of paper?

Ans. It was because the portion in "A" was finished when I saw it, and ready for signature; and I said to the defendant, that that did not include all we had agreed upon, and the defendant then said we will put it upon another piece of paper, and that it would do as well.

Cross 16. Will you swear that "Exhibit B" was drawn prior to the time that "Exhibit A" was signed?

162 Ans. I will so swear, because I would not have signed the one without the other.

Cross 17. Where were the said "Exhibits A and B" executed?

Ans. In the front office of the defendant's bakery, up stairs.

Cross 18. Who was there present at the time of their execution?

Ans. The two men who were witnesses to it.

Cross. Were there or not any other person or persons present at the same time?

Ans. I have no recollection of any other.

Cross 20. Were the said "Exhibits A and B" executed on the same day on which they bear date?

Ans. That is my recollection that they were.

Cross 21. You stated in your direct examination that "Exhibit B" was executed on a separate piece of paper, because it was forgotten or omitted in writing "Exhibit A." Do you feel as sure of
163 that statement as any other you have made?

Yes, sir, I do. The propostion to so write it was the defendant's, and I did not object to it.

Cross 22. How long did you remain in the city of Chicago after the said contracts A and B were delivered?

Ans. Left that day, at 9 40 p. m.

Cross 23. When next did you see the defendant in Chicago.

Ans. On the sixth of October.

Cross. 24. Will you state all the conversation that occur ed between you and defendant touching this patent, on your last visit referred to?

Ans. I don't know that I can do that, for we had a good deal said on the subject not of any importance, that is in reference to the failure on the part of the defendant not meeting me with the proper decision at that time.

164 Cross 25. Will you state any conversation that occurred between you and the defendant at that time touching this matter?

Ans. A good deal was said about the conduct of the son of defendant who left him for two months, and who had charge of putting this thing in operation. He also stated at the close, that if I had insisted upon forfeiting he would have given it up, and that occurred after I had told him that I should do nothing in the thing until his time was up in December.

Cross 26. What reason did the defendant give for not deciding at that that time whether to purchase the patent or not?

Ans. Because owing to the absence of his son, he had failed to get the thing ready.

Cross 27. Which son do you refer to?

Ans. That one who went away to get married, east.

165 Cross 28. What do you mean by the answer, "had failed to get thing ready?"

Ans. I mean that he said that.

Ans. Did you at that time, or at any other time, give him notice of a forfeiture of the contract?

Ans. I told him at that time, that the thing should remain in that way until December, and that I should not seek for a buyer until then, when his time was up, when the six months had elapsed.

Cross 30. Did the defendant give any other reason than the absence of his son, for not deciding to take the patent?

Ans. I don't think he did. He laid the blame upon him for going away.

Cross 31. Did he not give as a reason for not deciding then, that he had only recently obtained the machinery for making bread under

the patent, and that he had not had opportunity of determining whether good bread could be made with it?

166 Ans. No, he did not; because he knew that I knew when he got it that he had had the machinery for more than two months.

Cross 32. When did he receive the machinery?

Ans. It was about the end of Jnly, 1864, that he received it.

Cross. 33. Did you ever see the machinery before it came into his hands?

Ans. I never did.

Cross 34. Do you know what was the condition of the machinery when shipped to him, whether in condition for running or not?

Ans. Only from the representation of the settler, (Marin,) that it was in good order, and that he warranted it to be so.

Cross 35. Have you seen it since its arrival here? And if yea, state what was its condition then.

Ans. I saw it in October, and the condition was fair, it was of that kind that I do not think it could have been much out of order.

167 Cross 36. When the defendant said to you, that if you forced him to decide, then he should decline to take the patent, (on the occasion of your October visit,) what reply did you make?

Ans. None at all. It was about the last thing that he said to me before going away.

Cross 37. Did you not then urge the defendant to visit Rochester, N. Y., or some other eastern city, for the purpose of witnessing this process of making bread in actual operation.

Ans. I did then, not only, but often before.

Cross 38. Did you not do that same thing as late as March, 1865, and at other times, between the occasion of your October visit and March last.

Ans. I wrote him two letters, one about December 20th, going home. I suggested to him that I was too sick to come here, but would be glad to meet him at Rochester in order that he might see the thing rightly done; that is, the bread rightly made.

168 That letter he answered in February, saying that he was coming to New York. I wrote him again on the 25th day of March, on my being ready to start for Cincinnatti, suggesting the same thing, that he should meet me there, and be able to judge of the business. During that interval I had been sick in bed. He never answered it. He told me so; that he intended to come to New York, and did not answer it.

Cross 39. Did you or not, on the occasion of your October visit, and about the time he told you he should decline to take the patent, if compelled to decide then, tell the defendant to go on making further experiments, and satisfy himself.

Ans. I did not. I always laughed at his experiments.

Cross 40. Did you see the bread that he was making by this process on the occasion of your October visit.

Ans. I did not.

Cross 41. Did not the defendant, on that occasion, state to

169 you, that he had not been successful in making bread under the patent up to that time?

Ans. No, sir; he did not.

Cross 42. Did you ever notify the defendant that you considered his rights under the contract with him at an end?

Ans. No, sir; no farther than what took place, as I related in October.

Cross 42. Did you ever give him notice of a forfeiture of his rights under said contract with him.

Ans. I did not, except as I have related.

Cross 43. Did not the defendant, on the occasion of your October visit at Chicago, at or about the time he stated to you, that if he was obliged to decide then, he should decline to take said patent right, tell you, that he desired or would go on and try to make that process of making aerated bread a success in his hands?

Ans. He did not; he promised to go to some of the regular establishment and learn something about it.

170 Cross 44. Were you, or not, aware, during all this period since October last, the defendant was using said patent process in the manufacture of bread?

Ans. I supposed likely. I did not know it.

Cross 45. Will you now swear that the defendant, on the occasion of your October visit at Chicago, did not request further time to satisfy himself respecting said aerated bread?

Ans. I will swear that I have no recollection of any such thing. I will swear that I did not make any.

Cross 46. Did you not, then, on the occasion of the October visit, (referred to,) not only urge the defendant to visit some eastern establishment, where the same kind of bread was made, but also to proceed in making the same here?

Ans. No, sir. My object was different from that.

Cross 47. How happened Woodman, who resides in Chicago, to meet you on the 17th of April last, at the post-office in Cincinnatti?

171 Ans. I wish I could tell. I can't tell. I am not a spirit medium.

Cross 48. Had you not had communication with him, or Dake, either by telegraph, letter, through friends, acquaintances, or otherwise, prior to that time?

Ans. I had no communication, but Mr. Lee, of Cincinnatti, had.

Cross 49. Do you know what that communication between Mr. Woodman and Mr. Lee related to; and if so, what was it?

Ans. It was in reference to seeing me; that is, Mr. Lee informed him that I was then in Cincinnatti, and likely to remain for some days. I believe that was Mr. Lee's note.

Cross 50. At the time you met Mr. Woodman in Cincinnatti, what was the first thing said to you, touching this patent, by him?

Ans. Mr. Woodman asked me if the patent for Chicago was for sale.

Cross 51. What was the reply to that question?

172 Ans. I told him that it was.

Cross 52. Did Woodman, at that time, or at any other time, make any representations in regard to the insolvency of the defendant?

Ans. He did not at that time.

Cross 53. Did he make such representations at any time; and if so, when, and what were they?

Ans. He said he did not think he was solvent, or could pay his debts; that was since I have been here, at this time.

Cross 54. Did he not say the same thing, or something like it, at the time he was in Cincinnatti, or at the time you were in Chicago, about the 20th of April last?

Ans. I rather think it was myself who said it. We have a good deal of talk over the subject at various times. He agreed with me, I think, when I said it was a pretty hopeless case.

Cross 55. Did he not, at the time you were together in Cincinnatti, or when you had come to Chicago, in April, state that Mr.
173 Kendall was insolvent, or use other language equivalent to that?

Ans. I don't recollect. But whether that opinion came from him or me, I don't know that we had any that had that bearing at that time. I don't think he did. He did not volunteer anything of that kind, or originate anything of that kind. I think Mr. Lee did.

(That part of the last answer referring to Mr. Lee is objected to by Mr. Grant.)

Cross 56. Did you not state, when in Chicago, about the 20th of April last, to the defendant, in the presence of his son Cornelius, that C. L. Woodman, or the complainant Dake, or both, had represented to, or told you, that the defendant was insolvent?

Ans. I think the defendant insisted that these gentlemen had told me so; those words were spoken, but not by me. I certainly did not say that to the defendant in the presence of his son, or in any other presence. On the 21st of April, '65, the defendant
174 came to the store of Messrs. Dake & Woodman, at which time there was some very loud talk had, of which I remember nothing material.

Cross 57. Will you swear that you did not tell the defendant in the presence of his son Cornelius, either on the 20th or 21st of April last, that Mr. Dake or Mr. Woodman had told you that the defendant was in insolvent circumstances, or use language to that effect?

Ans. I will swear that I have no recollection of such a thing. What did occur in the evening meeting alluded to, I cannot tell, because it was a very confused affair. I have no recollection of it, therefore I do not believe I said it.

Cross 58. Will you state whether said process of making bread (aerated bread) was in successful operation in the city of New York on the 14th day of June, 1864?

Ans. I believe it was. I was not there, but I suppose the same establishment continues that was then in operation.

Cross 59. Is the same process in successful operation in the
175 city of New York at present?

Ans. The making of bread in the city of New York is at present suspended, for the purpose, as they say, of adding other machinery, supposed to be an improvement by Bacon, of Boston.

Cross 60. Will you state, if you know, whether said process of making bread is now in successful operation in the city of Boston.

Ans. I only know it is in operation. I do not know how successful.

Cross 61. Will you state whether said process is now in successful operation in the city of Cincinnatti?

Ans. No, sir, it is not; and I may say never was.

Cross 62. Will you state whether said process is in successful operation in the city of St. Louis?

Ans. I don't know. It is in operation, but not extensive.

Cross 63. What reason did you assign to the defendant, at the time that "Exhibit B" was executed, why you desired for a
176 decision earlier than December?

Ans. I contemplated a trip to New Orleans in November, and of course wanted to know beforehand what was to be the condition of this place.

Cross 64. Now, was not that "Exhibit B" written and signed after "Exhibit A" had been signed, and upon your own suggestion?

Ans. They were both signed together. When he first desired to have time, I told him I could not give it unless I could have a decision by October.

Cross 65. Did you make the proposed trip to New Orleans that fall?

Ans. No, sir, I did not; and in consequence of the severe sickness I have spoken of.

Further examination adjourned to June 15, at 9 a. m.

JUNE 15, 1865.

Examination of John Pendleton resumed:

177 Cross 66. Are you personally acquainted with A. B. Latta & Co., of Cincinnatti?

Ans. I did not know A. B. Latta. He is now dead.

Cross 67. When did you become acquainted with them?

Ans. He was employed by us to make a pump 2½ years ago.

Cross 68. Where did they reside when you made their acquaintance?

Ans. I knew him; (A. B. Latta,) resided in Kentucky, about a mile from Cincinnatti.

Cross 69. In what business was he then engaged?

Ans. In manufacturing steam fire engines.

Cross 70. Where?

In Ray street, Cincinnatti.

Cross 71. How extensively?

Ans. He was then closing up, but I don't known how large business he had done.

178 Cross 72. Who were the late company of A. B. Latta & Co.?

Ans. A. B. Latta, Phinley Latta, and Mr. Overin and Gates.

Cross 73. In what business had the other members of the firm been in before that?

Ans. Mr. Overin was a printer; Gates was a partner of Greenwood, making small hardware.

Cross 74. For what purpose was the firm of A. B. Latta & Co. formed?

Ans. Manufacturing aerated bread, according to this patent.

Cross 75. When was it formed?

Cross 76. Who sold them the patent right?

Ans. I did; about the time of the formation of the firm.

Cross 77. At what time, and on what tems?

(Objected to.)

179 Ans. I sold it for four thousand dollars dollars. The terms, $500 cash, and the balance in equal payments of six, 12, and 18 months, with interest.

Cross 78. How did they procure the buildings and machinery, with which they commenced operations?

Ans. I don't know.

Cross 79. Where was their bakery located?

In Latta's old establishment, in Ray street, Cincinnatti.

Cross 80. Did you ever inspect their machinery?

Yes, sir.

Cross 81. How extensive and valuable was it, as compared with other establishments?

Ans. It was a medium sized establishment.

Cross 82. Was the machinery new or old, and what was its cast or value?

180 Ans. It was new, and valued, probably, at $3,000, exclusive of the oven.

Cross 83. What was the the value of the oven, and was it adapted to the purpose?

Ans. They were new contrivances, and not very well adapted. The invention was Latta's, as he said.

Cross 84. Was that your opinion when you first saw them, or have recent events caused that opinion?

Ans. The idea, I thought a good one; but they were made in a different manner from the project.

Cross 85. Had the firm of A, B. Latta & Co., a competent capital?

Ans. I don't know what their capital was; but they spent a great deal of money.

Cross 86. Did they make the deferred payments on your contract?

(Objected to.)

181 They did not.

Cross 87. What ground did they assign, if any, for not making said payments?

(Objected to.)

Ans. The usual ground in those cases.

Cross 89. What is such usual ground in those cases?

Ans. All manner of difficulties with the patent, but in reality, the diffieulty was with the cash-box.

Cross 90. Has not one or more of said firm been possessed of large means ever since your contract with them was made?

Ans. I have not heard of it.

Cross 91. Is there not a litigation now pending in the courts of Cincinnatti, or elsewhere, brought by you against them for the recovery of said notes?

Ans. Yes; in the U. S. Court of Ohio.

182 Cross 92. What defence do they interpose, if any?

(Objected to on ground that there is better evidence.)

Ans. It is very long; I can't say what. Want of originality in one of the defences; failure of consideration is another, because the patent is valuable.

Cross 93. Are the survivors of A. B. Latta & Co., or any one else making aerated bread, according to this process, in the city of Cincinnatti?

Ans. I don't know. If they are, it is not by any other process.

Cross 94. Don't you know that the survivors of A. B. Latta & Co. are not making this bread?

Ans. They were not when I was there in April last. I don't know what they are doing now.

Cross 95. How did the establishment of A. B. Latta & Co. compare in quality and capacity with that of Mr. Kendall, in this city?

Ans. It had much more capacity, about double. The quality was about equal.

183 Cross 96. Have you had any other transactions with the patent in other places than Cincinnatti and Chicago? If so, state where.

Ans. Cleveland, St. Louis, Louisville, and New Orleans, and Grant's army.

Cross 97. What was your transaction in Cleveland, and when did you make it?

(Objected to.)

Ans. The sale of the patent about a year ago.

Cross 98. To whom did you sell?

Ans. The names are Munn & Warren.

Cross 99. At what price and on what terms?

Ans. Two thousand dollars, half cash, or one year's time.

Cross 100. Has the deferred payment been made?

Ans. It is not due.

Cross 101. Did the purchasers establish a bakery in Cleveland?

184 Ans. They did.

Cross 102. Is it now in operation?

Ans. It is, as far as know.

Cross 103. Have you ever seen any of the bread?

Ans. I have not.

Cross 104. Do you know how extensive business they are doing, of your own knowledge?

Ans. I have not been there.

Cross 105. What was the date of your transaction at St. Louis, and with whom?

(Objected to.)

Ans. I don't remember, but should think two years and a-half ago; it was with Alvord & Co.

Cross 106. Did you sell Alvord & Co. the patent? and if so, at what time and on what terms?

Ans. I sold it for sixty-five hundred dollars; cash one thousand dollars, and the rest at different periods.

185 Cross 107. Did Alvord & Co. establish a bakery for the purpose of putting into use this patent?

Ans. They did.

Cross 108. How extensive was it as compared with the Chicago and Cincinnati bakeries?

Cross 109. About the size of Mr. Kendall's (here.)

Cross 110. Was the machinery new or old?

Ans. Mostly new, I think.

Cross 111. Is that bakery now in operation? If so, to what extent?

Ans. I do not know.

Cross 112. Did Alvord & Co. make the deferred payments on your contract with them?

Ans. They have paid about four thousand dollars.

Cross 113. Were you not compelled to take legal proceedings to collect the same?

Ans. No, sir; I was not.

186 Cross 114. Did you not take possession of the machinery?

Ans. I did not; but I had a lien upon it.

Cross 115. When and how did you acquire that lien?

Ans. When the third note was due last October.

Cross 116. Did not one of the firm of Alvord & Co. state to you, as a ground for not paying you, that said patent right was not valuable?

Ans. No, sir, he never said a word; but said it was very valuable, just as Mr. Kendall himself says.

Cross 117. Was the establishment of Alvord & Co. the only one of the kind in St. Louis?

Ans. The only one.

Cross 118. Has it, in your judgment, proved successful there in the hands of Alvord & Co.?

Ans. I think it has.

Cross 119. Are there any notes due and unpaid from Alvord & Co. to you at this time?

187 Ans. The balance, over and above the $4,000, is due and unpaid.

Cross 120. What reason do Alvord & Co. assign, if any, for not paying?

Ans. They have not the means, I suppose; but expect to have.

Cross 121. When did you sell your patent right in Louisville, and to whom?

Ans. To Francis A. Moore, about three years ago for $2,500 on time, which was all duly paid.

Cross 122. Did he establish a bakery, and is it still in operation?

Ans. He did; but it is not know in operation, for it wus burned about a year ago; the last I knew of it, it was not rebuilt.

Cross 123. When and to whom did you sell the right to New Orleans?

Ans. I sold New Orleans to Dr. John C. Belden, in the spring of 1861, for $6,000—$1,000 cash, and the balance in 10 mos.

188 He did not build a bakery; he procured the use of one and did a very successful business while I staid there.

Cross 124. Did he ever make the deferred payment?

Ans. He did not; but he wrote me he was not allowed to.

Cross 125. Is that bakery in operation?

Ans. It is not; it was stopped for want of materials.

Cross. 126. To whom did you sell for Grant's army, and when?

Ans. I sold to a Mr. Field, about the time of the battle of Shiloh.

Cross 127. Did he put it into practical use? and if so, how long did he continue it?

He followed the army down to Vicksburg; since then I don't know anything of it.

Cross 128. Which of Mr. Kendall's sons was absent when you were here in October?

(Question withdrawn.)

189 Cross 129. In reply to the 25th cross-interrogatory you state that you told Kendall, when you were here in October, that you should do nothing in relation to the contract until his time was up in December. On further reflection, are you sure you made any limitation as to time?

Ans. The expression I made use of was, that I should not look up another purchaser until December.

Cross 130. Are you sure that you spoke of looking up a purchaser, to Mr. Kendall at that time?

Ans. Mr. Kendall treated the matter in rather a light manner; didn't seem to care for it, and I then fully believed I should have to look up another buyer, and I said so.

Cross 131. Are you sure you remember what you said, and not what you thought on that occasion?

Ans. I know that I thought it, and I believe that I said it.

Cross 132. What reply did Mr. Kendall make to you?

190 Mr. Kendall said that if I had insisted (then) upon it, he would have decided against it.

Cross 133. Who was present then beside yourself and Mr. Kendall?

Ans. I don't think there was any one. I was about taking leave, going out of the door.

Cross 134. Don't you remember that Cornelius Kendall was present at the time you took your leave?

Ans. I remember that he was not, for I looked into the lower room to see, and I did not see him.

Cross 135. Was that your last interview with Mr. Kendall before leaving town?

Ans. It was, as far as I can recollect.

Cross 136. Are you quite sure that all of the remarks you made to Mr. Kendall in relation to the time of the contract were made at this interview in which Mr. Kendall said in substance, that, if forced at that time to decide, he should not purchase?

191 Ans. I recollect of no other that referred to this matter.

Cross 137. When you are little excited from any unpleasant event, does it not affect a little the accuracy with which you recollect the conversations that occur?

Ans. I think to the contrary. I think I remember more distinctly, meanings, if not words.

Cross 138. Had anything been said to excite you at this time? If so, please state it was.

Ans. I cannot say I was very much excited, but I had the reflection of having travelled a thousand miles to get an answer promised in the contract, and had received nothing but the privilege of returning.

Cross 139. Did you not think you were hardly used and feel little angry about it?

Ans. I did; because travelling is rather costly, and time worth something.

Cross 140. Don't you sometimes, when you get a little angry, make hasty remarks that you would not be likely to make, if you
192 were not angry, and which you would not be likely to remember?

Ans. I suppose I am like other human beings, and that, I suppose, is common to humanity.

Cross 142. What did Mr. Geo. M. Lee say to you in Cincinnatti at or before Woodman came there last April, about the responsibility of Mr. Kendall?

Ans. He said that he considered him a hard case; that he had not acted well. He said that he supposed he was not responsible.

Cross 143. What did Mr. Woodman say at that time?

Ans. Mr. Woodman asked me if I had the patent in Chicago to sell, and I told him I had.

Cross 144. What did he say about Mr. Kendall's responsibility?

I don't think he said anything at that time. He was bargaining with me for that patent.

Cross 145. Did he make any allusion to Mr. Kendall's baking bread here at that time.

193 Ans. If he did, I do not recollect it.

Cross 146. Don't you remember that he made some allusion to Kendall at that time?

I think likely, but I don't remember what it was?

Cross 147. May he not have said that Mr. Kendall was not responsible, or words to that effect?

Ans. He might have said it; if he did, I don't remember it.

Cross 148. Don't you remember that he said something of that kind within a few days of that date?

Ans. I think I recollect that he agreed with me when I said it.

Cross 149. Don't you remember that within a few days of that time Mr. Dake said to you in substance that he would not lend Kendall money on his own name; but that when he lent it, he required the assurance of the book-keeper that it should be returned.

194 Ans. I heard him say it. I don't know when it was.

Cross 150. Did not Mr. Dake inform you, in substance, that he knew of Mr. Kendall's affairs, and that he was insolvent.

Ans. I think I heard him say at one time or another that Mr. Kendall would find it difficult to pay his debts. I heard him say that he had been associated with him in business, and found him not very apt to keep his contracts.

Cross 151. Did he not say, in substance, that he had investigated his affairs lately?

Ans. I have no recollection of that.

Cross 152. Did he not say, in substance, that he then knew of Kendall's affairs?

I think what he said was in the nature of a belief, not that he had any positive knowledge.

Cross 153. Who paid you your five thousand dollars on your contract with Mr. Woodman?

195 Ans. It was handed to me by Mr. Dake, in presence of Mr Woodman.

Cross 154. Was it in a check or currency; and if in a check, whose check?

Ans. It was in the form of a certificate of indebtedness. (U. S. certificates.)

Cross 155. At what hour of the day or evening was this handed you?

Ans. About five o'clock, I think.

Cross 156. Was it on the 20 or 21st?

Ans. On the day of my arrival. (I think that was the 20th.)

Cross 157. When and where did you deliver the contract of April 17. to Woodman or Dake?

Ans. On the 21st, (morning,) at place of business of both.

Cross 158. Why did you request Mr. Kendall to meet you at Rochester in March last?

196 Ans. On my return to New York, as I had been sick, and as yet had had no opportunity of finding a buyer for the patent in Chicago, I thought it possible that Mr. Kendall would buy it, and at the same time I might get payment for the note in my pocket. No man could look at that manufactory in Rochester for an hour without being satisfied of the value of that patent.

Cross 159. Why did you allow Kendall to continue manufacturing aerated bread after the 14th of December, 1864?

Ans. For two reasons; one was, it done me no harm, and the other, I might possibly get paid for it.

Cross 160. Did you not encourage him to manufacture after that date?

Ans. I encouraged him to come to Rochester.

Cross 161. Did you not urge him to go on after that date, and inform him in substance, that he could make the bread, everything he wished?

Ans. I have no recollection of so doing.

197 Cross. 162. Did you not, by a letter, mailed at Cincinnatti, December 18, 1864, and addressed to Orrin Kendall at Chicago, say among other things, "with regard to the success of this bread, I have come to the conclusion that it can be made just what you please; it is only to know the right way and to follow it?"

(Objected to by Mr. Goudy on the ground that what is enquired of is in writing and in the possession of the defendant.)

Ans. I have no doubt I wrote that; I did not address the sentiment of it personally.

Cross 163. Did you not intend the expressions alluded to in the last question, and reply as an encouragement to Mr. Kendall to persevere in his efforts to make good aerated bread?

Ans. No sir. I intended it as an opinion of mine, addressed to the world at large.

Cross 164. Did you not understand that such expressions had a tendency to induce him to persevere?

198 Ans. I had no such thought in my mind. The object of the letter was to induce him to visit Rochester, and thereby gain information.

Cross 165. Did you not furnish Bond instructions in pencil for drawing your contract with Kendall?

Ans. I dont remember it if I did.

Cross 166. In your instructions furnished Bond, was there any thing said in regard to the subject matter of "Exhibit B," (the contract) "Exhibit B"?

Ans. Both "A and B" were agreed upon at same time. The contract drawn by Mr. Whittlesey did not contain the contents of "Exhibit B."

Cross 167. Why did you come to Chicago at this time; and from what place?

Ans. I came from New York as a witness in this examination.

Cross 168. By whom were you apprised that you were needed as a witness in this case?

199 Ans. It was first by Mr. Lee, a lawyer of Cincinnatti; he was my attorney.

Cross 169. From whom did you next learn that you were needed here as a witness?

Ans. A letter from Mr. Dake. Next was a visit from C. L. Woodman.

Cross 170. What inducements were offered you by either of those gentlemen to induce you to come to Chicago to testify in this case?

Ans. I don't remember any, unless it was that they wanted me; there was one; Mr. Woodman gave me the answer of the defendant in this case to read, and that was the inducement.

Cross 171. Did Mr. Woodman not inform you that he would pay you your expenses if you would come?

Ans. Having no interest in the case whatever, I thought it reasonable that he should.

Cross 172. Have you not stayed at his house since you came?

200 I have been there during the time I have been spared from this office.

Cross 173. Do you expect to receive, in any event, any thing from Mr. Woodman or Mr. Dake for the patent right, beyond what you have received?

Ans. Nothing; unless the patent is renewed at some future day?

Re-examination by Mr. Gundy.

Cross-int. 49. When was the contract marked "Exhibit D," delivered and where?

Cincinnatti; on the day of its date, April 17, 1865.

Int. 50. You stated in your cross-examination that said contract was delivered on the 21st day of April, in Chicago. Is said statement correct?

Ans. It is not correct. It must have been a mistake.

201 Int. 51. Did you see the defendant after your arrival in Chicago on the 20th of April last, before you had delivered the assignment marked "Exhibit E?"

(Objected to as leading.)

Ans. No, sir; I did not.

Did any representation of Woodman or Dake in regard to defendant's solvency, induce you to sell the right of Cook county to either of them?

Ans. No, sir.

Int. 52. Did you ever have any conversation with Mr. Dake in regard to the solvency or insolvency of the defendant, or his knowledge of defendant's affair before the delivery of the assignment to Woodman, and the receipt of the $5,000?

Ans. I have no recollection of any previous to that time.

202 Int. 53. Did you give any authority to Mr. Lee to inform Woodman whether, or not, the right to this patent was for sale? and if so, when?

Ans. I don't remember any more than that I said to Mr. Lee, that I should be glad to sell the right.

(Objected to.)

It was about the time of my arrival at Cincinnati; it was about the 10th of April, 1865.

Int. 54. How many letters have you received from the defendant since you were in Chicago last October?

Ans. I think, but one, written in February last, and received in March, in answer to the one I wrote Dec. 17, 1864.

Int. 55. Will you furnish that letter as an exhibit in this case?

Ans. I now attach that letter, and mark it "Exhibit F."

Int. 66. Why did A. B. Latta & Co. stop baking aerated bread?

203 Ans. Said to be owing to dissentions among the owners.

He said to me they were doing very well; that they had made seventy-five barrels more flour into bread that month than he had done the previous month.

Int. 57. You stated in your examination-in-chief that the defendant had never paid you anything, or offered to perform his contract of June 14, 1864. You may state now, whether or not, since you made such answers, defendant had paid you anything; if so, how much, and what on?

Ans. Since then the defendant has paid me the amount of the note for 6 mos., which he gave me on the 14th of June, 1864, together with $35 being a year's interest.

Int. 58. State the time, as nearly as you can, when said payment was made.

Ans. It was about 4 o'c. yesterday.

What did you do with said note when you received the money?

I handed it to the defendant in this suit.

204 Int. 59. Did the defendant make any offer to [offer to] you at same time? And if so, what was it?

Ans. I don't know what he offered. I did'nt examine and I declined what

Recross-examination by Mr. Woodbridge:

Did not some one tell you, if so, who, and when, that Mr. Kendall did not intend to fulfill his contract with you?

I had a letter from New York from this place, from Mr. Town to that effect, which I now annex and mark "Exhibit G."

JNO. PENDLETON.

Subscribed June 16, A. D. 1865.

H. W. BISHOP, JR.,
Master, &c.

205 *Deposition of Henry Town.*

Examination of Henry Town before me the 18th day of June, A. D. 1865.

And the said Henry Town, having been first duly cautioned and sworn to answer truly all such questions as might be put to him under the direction of the master, did answer as follows:

My name is Henry Towne; I reside in Chicago; I am a commission merchant; I know the parties to this suit.

Int. 1. Are you the same Henry Towne who made an affidavit in this case heretofore?

Ans. I am.

Int. 2d. At what time did you have the conversation with Mr. Pendleton, alluded to by you in that affidavit in regard to the contract with Mr. Kendall.

Ans. Between the sixth and tenth of October last.

206 Int. 3d. Had you ever seen the written contract between

Mr. Pendleton and Mr. Kendall before that time? and if so, when?

Ans. I had, I think, at the time, directly after it was made.

Int. 4. What was your recollection in regard to the expiration of the time in which Mr. Kendall was to determine whether he would purchase or not, at the time alluded to in October last.

Ans. I supposed it had expired then.

Int. 5. What was your recollection at the same time in regard to the expiration of the time in which Mr. Kendall had the right to use the improvement under said contract?

Ans. I supposed it had expired at that time.

Int. 6. State as nearly as you can what Mr. Pendleton said to you?

Ans. He said that Mr. Kendall told him if he was to decide then that he would refuse to take it. There was something further said that he should go away in the afternoon and leave the matter.

207 Int. 7. When did you next see Mr. Pendleton?

Ans. Last week of Monday, I think.

Int. 8. Did you receive any instructions from Mr. Pendleton after the first of October last, in regard to finding a purchaser for the right to make the aerated bread for Cook county? and if so, when, and what were the instructions?

(Objected to.)

Ans. He wrote me to see Kane Brothers, on the west side, or any other party, to ascertain if they would not make a purchase of said patent. It was sometime in the winter. I don't know when.

(Answer objected to, because it is incompetent, and because there is better evidence in writing.)

Int. 9. Have you that letter? and if so, will you furnish the same to the master, to be attached as an exhibit to this your deposition?

(Objected to.)

Ans. I can't tell whether I have it or not, without looking.

208 Int. 10. Further examination postponed until 4 o'c., p. m.

Examination of Henry Towne resumed:

Int. 11. Have you made search, since answering the last question, for said letter?

Ans. I have.

Int. 12. State whether you have searched, and with what success.

Ans. I have looked my letters all through, but that one I could not find.

Int. 13. From such examination do you think said letter is lost or mislaid?

Ans. Yes, sir.

Cross-examination of Henry Town, by Mr. Woodbridge:

Cross-int. 1st. Was the written contract between Pendleton and Kendall, you say you saw, in reply to the third interroga-

209 tory, the same as "Exhibit A," now shown you?

Ans. Yes, sir.

Cross-int. 2. Do you remember that you saw any other contract at that time?

Ans. I have seen these contracts at two different times, but whether I saw them at the same time I can't say.

Cross-int. 3. What is your best recollection on that subject?

Ans. I think that after the agreement was made, he showed me the contracts, and then when he came again last fall, I think I saw them again.

Cross-int. 4. Did you ever read these contracts?

Ans. I read them, or Mr. Pendleton read them to me.

Int. 5. When?

Ans. When they were made, and again last fall; I didn't read it over last fall, for I knew what it was.

210 Cross-int. 6. Did you remember, last fall, the terms of the larger contract?

Ans. I didn't remember the dates of the contracts.

Cross-int. 7. Did not Mr. Pendleton say to you in his conversation last fall, in substance, that Kendall said, that if he was obliged to decide then, he should decline to take it, (meaning the patent,) and that he, Pendleton, had decided to give him (Kendall) more time, or words to that effect?

Ans. He made this remark: says he, "Mr. Kendall says, if I am obliged to decide now, I shall refuse to take it." I think I said to him, what shall I do? He said, What can I do; only one thing—go away and leave the matter as it was. Those were the words he used.

Cross-int. 8. Have you refreshed your recollection as to that conversation since Mr. Pendleton came here this time?

Ans. Mr. Pendleton showed me a short contract since he came here, which I had forgotten when I made my affidavit before. The contract is marked "Exhibit B," is the one he showed me.

211 Cross-int. 9. Did, on examination of the contract "Exhibit B," tend to refresh your recollection? and if so, in what manner?

Ans. I supposed that the main contract ended at that time, and by leaving the matter with Kendall, it was continued. He did not tell me that he had extended it, but that he was going to leave it.

Cross-int. 10. Was it not your recollection, before you saw the short contract at the time last alluded to, that Mr. Pendleton had told you, in substance, that he had concluded or decided to give Kendall more time?

Ans. I don't remember that he said he had decided to do it with Mr. Kendall, but I supposed that he had.

Cross 11. From what he said?

Ans. Yes.

Cross 12. At the time Mr. Pendleton last showed you the short contract, did you not converse with him about the conversation of last October?

212 Ans. I did.

Cross-int. 13. Did you not somewhat refresh your recollection by that conversation?

Ans. I did.

Cross-int. 24. At the time you made your affidavit in this case, did you not believe the statements thereof to be true?

Ans. I stated, as near as I could recollect, the conversation and my impressions.

Cross-int. 15. Examine the paper now shown you, and state if that is not a statement signed by you, and furnished Mr. Grant, (of Woodbridge & Grant,) the day it bears date, as a statement of your understanding of the facts, and your recollection of them as therein detailed. I attach said statement here, and mark it "Exhibit H."

Ans. It is.

HENRY TOWN.

Subscribed June 16, A. D. 1865.

H. W. BISHOP, JR.,
Master.

213 *Exhibit A.—Depositions Pendleton & Town.*

R. W. BISHOP, Jr., *Master, &c.*

It is agreed between John Pendleton, of the city and State of New York, and Orrin Kendall, of the city of Chicago, Cook county, and State of Illinois:

That whereas, the said John Pendleton is the owner, by assignment, of the right of Cook county, in the State of Illinois, to all the privileges conferred by letters patent issued March 9th, 1858, to James Perry, Daniel Fitzgerald and Horatio Bogart, of the city of New York, for "certain new and useful improvements in the process of raising and preparing dough," which right, so conferred by said letters patent in the county of Cook, and State of Illinois, the said Orrin Kimball proposes to purchase of said Pendleton at the sum of sixty-five hundred dollars.

That in consideration of five hundred dollars paid by said Kendall to said Pendleton, the said Kendall shall have the right, the privileges conferred by said patent, and the process therein described, within the whole county of Cook, in the State of
214 Illinois, for the period of six months from June 14th, 1864, at the end of which period he shall have the privilege of buying the perpetual right conferred by said letters patent, at the additional sum of six thousand dollars, payable in six equal instalments of six, twelve, eighteen, twenty-four, thirty, and thirty-six months, from December 14th, 1864, and bearing interest at the rate of seven per cent., payable annually. If, at the end of said period, said Kendall declines to make the full purchase of said rights for Cook county as aforesaid, the said Pendleton retains the said five hundred dollars, and is released from this obligation; but if said Kendall elects to purchase said right, the said Pendleton shall make a good and sufficient transfer of all the franchises and privileges conferred by said letters patent within and for the county of Cook, in the State of Illinois, to said Kendall and his assigns, and said Ken-

dall shall give his six notes for said instalments, with interest, as aforesaid.

In the event of said Kendall electing to purchase the remainder of the patent right from December 14th, 1864, the interest then accrued on the six thousand dollars will be due and payable at that time.

JNO. PENDLETON.
O. KENDALL.

Attested:
JOHN RONS.
R. P. COATS.

Chicago, June 14th, 1864.

215 Endorsed: "John Pendleton to Orrin Kendall. Articles of agreement. Chicago, June 14, 1864."

Exhibit B.

H. W. BISHOP, Jr., *Master, &c.*

It is understood between John Pendleton and Orrin Kendall, that a notice is to be given by said Kendall to said Pendleton of the termination of said Kendall in relation to fulfilling a certain agreement made and enter'd into, June 14th, 1864; that is to say, either to decline or continue the fulfilment of said agreement on or before the first day of October next.

O. KENDALL.

Chicago, June 14th, 1864.

[5-ct. U. S. rev. stamp.]

216 *Exhibit C.*

H. W. BISHOP, Jr., *Master, &c.*

CHICAGO, *Nov.* 13, 1864.

Mr. PENDLETON:

DEAR SIR: Yours of the 5th was duly received, and very glad I was too to hear from you so soon, as I did not know that you would receive my letter.

I have been in Mr. Kendall's, as you wished me to do, and learn from Mr. Wicks as follows: They are not selling near as much as they can manufacture. They can bake in the one oven they are using about 6 bbls. per day, and yet cannot find sale in the city for that amount. He says they will not have as large demand during the winter as they will after cold weather is over. He says, too, that you cannot expect near as much as you have bargained for with Kendall; that he expects to get it for a much less sum than was agreed upon between you on the start. I asked him what he thought Kendall would be willing to give and close up the concern, and he did not know.

There was no one in at the time, neither the old man nor
217 son, so I learned nothing direct from them. All this comes from Wicks. I think he knows about how the matter stands. You knew enough of Kendall to form your opinion in regard to what he intends to do. If you oould have the same advantage you had when you first made your bargain with him, I am sure he would not be delaying long. The young man said to me once, that he understood I was thinking some of going into it. I told him some other parties wanted me to help them get the patent for them, who were living in Milwaukee. I am fearful you may yet find trouble in closing up the matter, unless there is some other lever to work on. Let me hear from you soon, and if I can be of any farther service to you, will most cheerfully give you all the aid I can.

Very truly, yours,

HENRY C. TOWN.

Endorsed: "H. C. Town, Nov. 13th, '64."

218 *Exhibit D.*

H. W. BISHOP, *Master*, Jr., *&c.*

Whereas, James Perry, Daniel Fitzgerald, and Horatio Bogert obtained a patent from the government of the United States, dated March 9th, 1858, "for certain new and useful improvements in the process of raising and preparing dough," the title to which for the county of Cook and State of Illinois, is vested, by assignment in John Pendleton, of New York, which right, in Cook co., Charles L. Woodman, of Chicago, desires to buy. Now said John Pendleton and Chas. Woodman contracted as follows: Said Chas. L. Woodman agrees by May 1st, A. D. 1865, to pay said John Pendleton five thousand dollars in cash for the right to said patent for said Cook co., Illinois; and said John Pendleton agrees thereupon, for said sum, to assign all the right, title, and interest of said patent in and for said Cook co. to said Chas. L. Woodman by a proper written paper assignment, now drawn in blank, and ready for signature and delivery, and in the hands of said John Pendleton. Witness the hands of the
219 parties at Cincinnatti, Ohio, April 17th, 1864.

JNO. PENDLETON.
CHARLES L. WOODMAN.

Attest:
G. M. LEE.

[5 ct. U. S. rev. stamp.]

Exhibit E.

H. W. BISHOP, Jr., *master*, *&c.*:

Whereas, James Perry, Daniel Fitzgerald, and Horatio Bogert obtained a patent from the government of the United States, dated March 9th, A. D. 1858, for an "improvement in raising dough," the title to which patent in and for Cook county, in the State of Illinois,

has become vested, by assignments, in John Pendleton, of New York; and whereas, Charles L. Woodman, of Chicago, desires to buy said patent, and the right thereto in said county of Cook, in the State of Illinois:

Now, in consideration of ($5,000) five thousand dollars in hand paid by Chas. L. Woodman to John Pendleton, I, the said John Pendleton, do hereby sell and assign to said Charles L. Woodman the said patent, and all the right, title, and interest of the patentees so assigned to me in and for the said county of Cook, and State of Illinois, to be, by said Chas. L. Woodman, his heirs and assigns, held and enjoyed to the full end of the term of said patent, as fully as I might have held and enjoyed the same had this sale and assignment not been made.

220

Witness my hand and seal this 21st of April, A. D. 1865.

[SEAL.] JNO. PENDLETON.

Attest:

[SEAL.] G. M. LEE.

[5-cent U. S. revenue stamp.]

U. S. PATENT OFFICE.

Received and recorded May 2, 1865, in Liber T 7, page 433, of transfers of patent. In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.] D. P. HOLLOWAY,
Com'r of Patents.

Endorsed: Chicago, April 21st, 1856. For value received I hereby assign to Mr. Joseph M. Dake the within assignment, with all that it conveys. C. L. Woodman.

U. S. PATENT OFFICE.

221 Received and recorded May 2, 1865, in Liber T 7, page 433, of transfers of patents. In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.] D. P. HOLLOWAY,
Com'r of Patents.

"———(?) 17 and 18. Jno. Pendleton to Charles L. Woodman, Assingment, J. M. Dake, Chicago, Ill. Rec'd May 2, '65. Fee $2, p'd.

Exhibit F.

H. W. BISHOP, Jr., *master, &c.*

CHICAGO, *Feb. 15th*, 1865.

JOHN PENDLETON, Esq.:

Your note of Dec. 17th, 1864, from Cincinnatti, was rec'd in due time. I did not reply at once, as I intended to visit N. York, if not before, soon after the first of Jan., 1865; but a combination of cir-

cumstances and business have prevented me from doing so up to the present time.

I hope to visit N. Y. early in March next, but before doing
222 so, thought best to drop you a few lines, and report progress in the aerated bread business.

I visited Detroit a few days since, and found Mr. J. Copeland doing but a small business in the aerated bread, baking only three bbls. of flour into the ærated bread. I also hear that St. Louis is running down in that kind of bread; but as to my progress, I can say that after experimenting both in machinery and men to work it, at a continued heavy expense, I am now baking the best bread I ever saw, and my man Yankee is the man that is doing it. I use the best winter flour, which makes bread as white as milk. I am running from 5 to 6 bbls. per day, and the sales increasing.

I saw in the late reports of new patents that the original patentee, Mr. Fitzgerald, has a new patent for the aerated bread. How does this affect Cook co., Ill., and your rights and mine?

Very respectfully,

O. KENDALL.

Endorsed: "O. Kendall, 25th Feb'y, '65. Filed June 17, 1865. Wm. H. Bradley, clerk.

223 *Depositions Joseph M. Dake, Charles L. Woodman, and John E. Woodman, taken before Bishop, June* 26, 1865, *together with the exhibits thereto attached, as follows, to wit:*

224 Circuit Court of the United States, northern district of Illinois.

JOSEPH M. DAKE
vs.
ORRIN KENDALL.

Pursuant to an order made in the said court in the said cause, on the 24th day of June, A. D. 1865, wherein and whereby it was referred to the undersigned, a master in chancery of said court, to take the proofs in the said case and report the same to the said court, I, H. W. Bishop, jr., master in chancery as aforesaid, do hereby report that in pursuance of said order I was, at the times hereinafter mentioned, attended by W. C. Goudy, esq., solicitor for the complainant, who produced before me Joseph M. Dake, Charles L. Woodman, and John E. Woodman, witnesses in said cause on the part of the complainant, and by Jno. Woodbridge, jr., solicitor for defendant, and the Joseph M. Dake, Charles L. Woodman, and John E. Woodman, having been by me first duly cautioned and sworn to make true answers to such questions as should be put to them under the direction of the said master, did (upon examination) make answer as follows:

225 *Deposition of Jos. M. Dake.*

Examination of Joseph M. Dake:

JUNE 26*th*.

(Mr. Woodbridge objects to the competency of Joseph M. Dake.)

Int. 1. What is your name, and residence, and age?

Ans. My name is Joseph M. Dake. I am plaintiff in this case. I know the defendant; have known him about seven years.

Int. 2d. Do you know Jno. Pendleton? And if so, how long, and when did you first see him, and where, and what occurred?

Ans. I first saw him on the 20th of April, and have known him since I saw him at Woodman's bakery. I paid Mr. Pendleton at that time $5,000 for a patent right, which was assigned to Mr. Woodman, and I received the assignment.

Int. 3. When did you next see him, and what occurred?

Ans. On the 1st of April. The next day I called Mr. Pendleton's attention to the fact of his having left out the date of the assignment.

226 Int. 4. What blank was left in the assignment which was delivered on the 20th of April?

Ans. The day of the month, and that was inserted the next day by Pendleton.

Int. 5. Had you ever seen Pendleton previous to the 20th of April, 1865, or had any communication with him by letter or otherwise?

Ans. I never had.

Int. 6. State whether, previous to the assignment of the patent right for Cook county by said Pendleton to said Woodman, any representations were made by you to the said Pendleton, in relation to the solvency of defendant Kendall?

Ans. I never made any representations of any kind to Mr. Pendleton at any time in reference to Mr. Kendall, either as to the solvency or insolvency previous to the time I paid the money and received the assignment.

Int. 7. Look at paper marked "Exhibit one," and state when the same was executed and by whom.

(Objected to by Mr. Woodbridge.)

227 Ans. I have examined paper marked "Exhibit one;" it was executed 21st day April, 1865, and by Charles L. Woodman.

Int. 8. Look at Exhibits "A and B," attached to the deposition of John Pendleton in that case, and state when and where you first saw the same.

Ans. I first saw them in Woodman's office, 20th of April, 1865.

Int. 9. State whether you saw them before or after the assignment, and how you came to see them?

Ans. I saw them after the assignment was made, and after I paid the money. Mr. Pendleton said he would leave all the papers with me, and these were among them. Among the papers left was the assignment from Willard Parker to John Pendleton.

Int. 11. Had you ever, at any time, saw papers marked "A and B," refered to before that time, or had any knowledge in relation to the same?

Ans. I never had seen the papers before that time, and never had any knowledge of them.

228 Int. 12. Did Kendall, or any other person, before that time, explain contracts marked "Exhibits A and B," to you?

Ans. Mr. Kendall, nor no other person, explained to me about that contract, and I never knew there was such a contract.

Int. 13. Did defendant, Kendall, previous to that time, state to you that he had any claim to said patent right for Cook county?

Ans. He never did.

Int. 14. Were you ever in partnership with the said defendant, Kendall? And if so, where, and how long?

Ans. I was in partnership with Mr. Kendall about one year, in 1860 and 1861.

Int 15. Was the partnership business profitable?

Ans. I considered it unprofitable, and I offered to give Mr. Kendall my services, and one thousand dollars during the year if he would let me off.

229 Int. 16 Have you, during the last year, entered into a treaty or negotiation with said defendant, Kendall, for the purpose of forming a partnership with him?

(Objected to.)

Ans. I entertained a proposition from Mr. Kendall to me, to enter into a partnership with him during last March. He wanted I should furnish $15,000, and take an interest in his business. I refused to enter into any partnership with him.

Cross-examination of Joseph M. Dake, by Mr. Woodbridge:

Cross 1. At what time on the 20th of April, did you first see John Pendleton?

Ans. I cannot give the exact time, it was during the afternoon.

Cross 2. Was it before or after 3 o'c.?

Ans. I can't state whether it was before or after.

Cross 3. Did he come directly from dinner to Woodman's store, or did he go somewhere else before?

230 Ans. I don't know?

Cross 4. Did he not tell you he was going somewhere else?

Ans. He did not.

Cross 5. Did he not tell you he had been to see Mr. Kendall?

Ans. He told me he had not been to see Mr. Kendall, and that he was going there for the purpose of trying to collect a note of $500, which he had against him.

Cross 6. Did he tell you this before or after you had closed your bargain?

Ans. It was after.

Cross 7. How long did your interview with him last, or about how long?

Ans. It was not a great length of time; the time required to do that amount of business; it may have been one hour or less.

Cross 8. Did you expect Mr. Pendleton that day?

231 Ans. I did; Mr. Woodman told me he agreed to meet him that day.

Cross 9. When did you have a conversation with Woodman about this patent right?

Ans. I don't know that I recollect the time; it was some time after I had been there; he works for Mr. Woodman; it was more particularly about the bread than about the patent right.

Cross 10. When did you go to work for Mr. Woodman?

Ans. About February or March; I can't tell which; I can by examining papers which I have.

Cross 11. How long after you went to work with Mr. Woodman, did you begin to talk about this bread?

Ans. I can't tell; pretty soon I think.

Cross 12. Was it not within a week?

Ans. It might have been, and it might have been longer.

232 Cross 13. Did you, at the time of your first conversation with Woodman, know of the existence of the patent?

Ans. I knew nothing of the patent, other than I had heard people say there was a patent.

Cross 14. Who had you heard say that there was a patent?

Ans. I heard the bakers about town speak of it.

Int. 15. Had you not heard Orrin Kendall, or his son Cornelius, speak of it?

Ans. Mr. Kendall, or his son, or either of them, never spoke to me of the patent previous to the time I purchased it.

Cross 16. Please specify the name of the baker who told you of the patent?

Ans. Henry C. Childs.

Cross 17. When did he tell you?

Ans. Either before or after that time.

233 Cross 18. Was anything said in your conversation with Childs about Kendall's manufacturing the bread under this patent?

Ans. He said nothing with reference to that.

Cross 19. Did he not speak of Mr. Kendall making the bread?

Ans. No, sir.

Cross 20. What did he say about the patent?

Ans. I asked Mr. Childs why he had not secured the right to make aerated bread in Chicago, and he said he did not want it.

Cross 21. What reason did he assign?

Ans. He said he had so much business he did not want anything requiring so much attention.

Cross 22. Did he not say that Pendleton had offered it to him, and that he considered it a failure?

Ans. He said nothing of Mr. Pendleton, or of his considering it a failure.

Cross 23. Did you not know that Mr. Kendall had a right for Cook county?

234 Ans. I did not; I did not know Mr. Pendleton.

Cross 24. Do you remember of any his son telling you that Mr. Kendall had this patent before your first conversation with Woodman about the bread?

Ans. Neither Mr. Childs, or any person, spoke to me of that patent previous to that time, with reference to who owned Cook county, or had a right title.

Cross 25. From what source did you then derive your information previous to that time?

Ans. I had no information except that I derived from inference. I saw Mr. Kendall making bread, called aerated bread—patent bread—and I inferred there must be some sort of a patent.

Cross 26. Then you had no information except that?

Ans. I saw a sign in New York, "Aerated Bread," and was told it was an aerated bread bakery.

Cross 27. When did you see that sign in New York?

Ans. About one year ago.

Cross 29. Who told you about it?

Ans. I think it was a brether of mine.

235 Cross 30. Did he not tell you it was a patent bread?

Ans. No, sir.

Cross 31. You are quite sure that no one ever told you that the bread was patented until your first conversation with Mr. Woodman?

Ans. I am sure that no one ever explained to me the nature of that patent, what it was, or how the bread was made, or any peculiarity relating to it previous to that conversation.

Cross 32. Are you quite sure that no one, previous to that time, told you there was such a patent?

Ans. I was told last summer, in New York, by Mr. Kendall's son, that his father had bought a patent for making aerated bread, and if he had done so, he was a damned old fool; but he did not tell what the patent was, neither did I know at that time.

Cross 33. Who else had told you of the existence of the patent, besides Mr. Kendall's son, before that conversation?

Ans. Mr. Kendall's son did not tell of the existence of the patent, nor did any one else, before that time.

236 Cross 33. Who, besides Mr. Kendall's son, had referred to the patent before that time?

Ans. I recollect of no one.

Cross 34. Which son of Mr. Kendall made the remark you attribute to him?

Ans. Edward K. Kendall.

Cross 35. Who had you heard speak before that time of Mr. Kendall's manufacturing under the patent?

Ans. I don't recollect of any one in partirular; I heard different persons, in speaking of the bread.

Cross 36. Don't you remember Orrin Kendall, in speaking of the bread, say that he had got a right which no one could get from him for manufacturing this bread?

Ans. Mr. Kendall never said anything of the kind to me.

Cross 37. Was it not a matter of common conversation that Mr. Kendall was making it under a patent right?

Ans. I did not hear it spoken of in that way.

237 Cross 38. Then you never heard any one, before your first conversation with Woodman, before referred to, say that there was a patent for the bread which Mr. Kendall was manufacturing?

Ans. I might have been told that there was a patent, but it was never told what that patent was.

Cross 39. Who told you that there was a patent?

Ans. I might have been told by different parties, but I don't know that was.

Cross 40. May not Orrin or Cornelius Kendall have told you?

Ans. I never had any conversation with Orrin or Cornelius Kendall with reference to the patent previous to the conversation alluded to.

Cross 41. When did Orrin or Cornelius Kendall first speak to you about the patent?

Ans. I don't recollect what time it was. Mr. Kendall nor Cornelius never spoke to me about the patent, as to what it was, or who they got it of; whether they bought or leased it until after, or on the day of, the 20th of April.

238 Cross 42. Did not one, or both of them, speak to you of the patent before you bought?

Ans. They spoke to me of having the patent.

Cross 33. Did they speak to you at the same time.

Ans. I don't recollect having any distinct conversation with either of them, except as stated.

Cross 44. How long before your purchase did that one with Cornelius take place?

Ans. I do not know.

Cross 45. Where?

Ans. On the sidewalk in front of the bakery.

Cross 46. Was that the only one you had with Cornelius before you bought?

Ans. I never had any conversation with Cornelius about the patent, except it might be incidental to the conversation we were having about the making of bread. I asked him a number of times about making the bread, but he never at any time, either before or after the purchase, told me what the patent was, who they bought of, or the conditions upon which they bought it, or anything about the purchase or the patent.

239 Cross 47. Did not Cornelius, at this conversation, tell you that his father was to pay $6,000 for it?

Ans. No, sir.

Cross 48. Did he not tell you of the profit realized on the business of his father?

Ans. Neither at that time or any other.

Cross 49. Did you not state to Cornelius that, if his statement was correct, Orrin Kendall had the best business in town, or that you would prefer to go into his business to any in town, or words to that effect?

Ans. I never did the first; when they were trying to persuade me to go into business, and I told them if I was going into any business had rather go into the baking business to any other.

Cross 50. Did you not, in your said conversation with Cornelius, state, in substance, that if Cornelius' statements were correct, you had rather go into business with Orrin Kendall than with any person in town, and that you would put in it 10,000 in capital?

240 Ans. I never said anything of the kind.

Cross 51. On this occasion to Cornelius, what did you say, in substance, about joining into business with Orrin Kendall?

Ans. I don't know that it was on that occasion; but I did say to Cornelius Kendall that I had been a partner with his father for one year, and that I would never be again.

Cross 52. Where were you when you made the statement?

Ans. I don't know where it was, but he was arguing me to become a partner with his father.

Cross 53. When Cornelius was arguing you to become a partner with his father, what statement did he make use of to induce you to comply with his request?

Ans. He told me that if I would put in $15,000 cash into the business that they would raise the building and build new ovens; put in new boiler and engine; and by so doing he had figured that they could save $4,000 in fuel and labor, and that they could give me a

241 chance to make a good interest for my money.

Cross 54. What did he say about aerated bread on this occasion?

Ans. He told me how many barrels they were baking. I told him if that was so they must be making considerable money, and that he had better wait another year and they would have money enough to make their improvements without my coming in with them.

Cross 55. What did Corneilus say about the cracker business on this occasion?

Ans. He told me about how many barrels they were baking every day.

Cross 56. What did he say on this occasion about the business being profitable or otherwise?

Ans. I estimated the amount of profits of a barrel of flour baked into bread, and into crackers, and told him if the amount he states they were baking was so, that the last thing he or his father should think of should be having any one go into partnership with them, for they could make all the capital they needed, or required me to put in, in less than six months.

242 Cross 57. In what manner did you arrive at the profit to be made in a barrel of flour made into aerated bread?

Ans. Why general knowledge of the baking business, knowing what flour cost and what bread sold for.

Cross 58. How much net profit did you figure on a barrel of flour made into aerated bread?

Ans. I told Cornelius that they must make $4 00 per barrel from the estimate I had made.

Cross 59. What net profit per barrel is realized from bread made in the ordinary way?

Ans. I think that I estimated that the expense of making that bread at that time was fifty cents to a dollar on a barrel of flour, less than the ordinary method.

Cross 60. Is there not something saved in the flour itself?

Ans. No, sir.

Cross 61. Did you not figure an additional profit from the increased number of loaves that could be made?

243 Ans. No, sir. I asked him how many loaves they did make, and made my estimate from the number of loaves and cost of the flour.

Cross 62. From whom did you learn the cost of the manufacture?

Ans. No one; I estimated it myself.

Cross 63. Had you ever made any aerated bread?

Ans. No, sir.

Cross 64. Had you ever seen it made?

Ans. I never had.

Cross 64. Did you understand the process by which it was made?

Ans. I did not.

Cross 65. How then did you know it would cost fifty cents to a dollar less per barrel?

Ans. I did not know it; it was my estimate it would be about that amount.

Cross 66. Upon what facts did you base that estimate?

Ans. My estimate was a rough one, made for no other purpose than to convince Corneilus Kendall that they did not need a
244 partner, and he should not take one, and that they had better not raise their building, nor spend any more money until they had made it on their business.

Cross 67. How did you know anything about the cost of manufacture by this process?

Ans. I had no other means of knowing, other than to judge of the ordinary transactions of business, and my knowledge of the business.

Cross 68. What was there in your knowledge of the business, to inform you, or to the cost of the manufacture about which you knew nothing?

Ans. I had no data to work from, only my general knowledge of the baking business.

Cross 69. Had not Orrin Kendall previously told you what it cost to manufacture by this process?

Ans. He never had.

Cross 70. Did you not say to Corneilus, when you made your estimate, in substance, "your father says it costs so much to make
245 a barrel of flour of aerated bread"?

Ans. I did not.

Cross 71. Did not Corneilus tell you about the cost of manufacture by this process?

Ans. He did not.

Cross 72. From whom did you first ascertain the cost of manufacturing bread by this process?

Ans. I never yet have learned it from anybody.

Cross 73. Had not Corneilus or his father given you an estimate of the cost by this process?

Ans. Neither of them.

Cross 74. From whom did you first ascertain that the title of the patent for Cook county was in John Pendleton?

Ans. I think the first knowledge that I had of it was from a letter that was sent from Cincinnati, directed to Charles L. Woodman, written by Geo. W. Lee, "as Exhibit two" hereto attached, that is the first time I ever knew who owned that patent.

246 Cross 75. Had you ever heard of John Pendleton before?

Ans. I think, about the first of April I heard his name mentioned by Charles L. Woodman.

Cross 76. What did he say about him?

Ans. I think he had nothing to say about him, except that I had previously asked him who owned the patent; he told me he did not know, he had forgotten his name; that he could find out by enquiring. I think he enquired, and told me Mr. Pendleton did own it, or something to that effect.

Cross 77. How long before that time had you enquired of him who owned it?

Ans. That was the first enquiry I ever made of him, about the first of April.

Cross 78. Was the letter the first one that passed between Mr. Lee and Mr. Woodman about this patent?

Ans. It was the first one I ever saw.

Cross 79. When you asked Mr. Woodman who owned the patent, did he not write Mr. Lee to enquire?

247 Ans. Not to my knowledge.

Cross 80. Was not this letter received in answer to one written by Mr. Woodman?

Ans. I think Mr. Woodman never wrote Mr. Lee on this subject; if he did I did not know it.

Cross 81. Did he not telegraph him on the subject?

Ans. Not to my knowledge.

Cross 82. Had not Mr. Woodman been to Cincinnati to see him on the subject?

Ans. He may have been. He told me he was going to Cincinnatti to find out who owned the patent, and see if it was for sale.

Cross 82. Did he go to Cincinnatti before or after the first of April, 1865?

Ans. After the first of April.

Cross 83. Did he go before or after he first told you Mr. Pendleton was the man who owned the patent?

Ans. He went to make enquiries, but he did not tell me Mr. Pendleton owned it.

Cross 84. Of whom did he make the enquiry?

248 Ans. I think he said Thompson & Templeton could tell him.

Cross 85. Did you not know that Mr. Kendall was making aerated bread at this time?

Ans. I did.

Cross 86. Why, then, did you suppose that the patent was in the market for sale?

Ans. I told Mr. Woodman that I had been associated with Orrin Kendall, either directly four years, or indirectly, and that during that time I had never known him to do as he agreed to the first time, without being compelled to, and I never knew him to pay a debt, unless he was obliged to; and I told him, in this case, I did not believe he had done better than in other cases, had he had made, or where he had agreed to pay, and advised him to go and see if it was not the case with Mr. Pendleton.

Cross 87. How did you know that he owed Mr. Pendleton anything?

Ans. I did not.

249 Cross 88. What led you to suppose he owed Mr. Pendleton anything?

Ans. Nothing; only the general manner he had of doing business.

Cross 89. How did you know he had not bought the patent for cash?

Ans. I only judged so from the fact that when he commenced business, he told me he had not a dollar to commence with.

Cross 90. When did he make the statement just referred to?

Ans. About the time he was going into business, the same time that I left the baking business, a year ago last February.

Cross 100. How did you know that he has not bought it for a small price, for cash?

Ans. I did not know anything about it.

Cross 101. How did you know that the deferred payment had matured?

Ans. I did not know anything about it. I only judged from his manner of doing business; if there was any payment to be made they had been or would be deferred.

250 Cross 102. Had not any one stated to you, that Mr. Kendall owed Pendleton for this patent?

Ans. No, sir. I never heard Mr. Pendleton's name mentioned, as I have above stated, until Mr. Woodman mentioned it to me, and I had never heard of the contract between Pendleton and Kendall.

Cross 103. And you had never heard that Mr. Kendall had bought the patent?

Ans. I knew that he was baking bread, but I did not know that he had it, or how he had bought it.

Cross 104. And you had never heard that Mr. Kendall had bought the patent?

Ans. I never had heard that Mr. Kendall had bought the patent, or had contracted to buy it.

Cross 105. What did E. K. Kendall tell you in New York last summer?

Ans. He said he had heard that his father had bought, or was about to buy that patent, and if he did, he was a damned old fool.

Farther examination postponed until June 27th, at 10, a. m.

H. W. BISHOP, Jr., *Master.*

251 Examination of Joseph M. Dake resumed:

JUNE 27, 1865:

Cross 105. Did you not tell Cornelius Kendall, at your said conversation, that you had offered to lend his father $10,000, if he would take you into his service, or words to that effect?

Ans. No, sir. I never offered to lend Mr. Kendell that, or any other sum of money, nor did I tell Cornelius Kendall so. I offered to furnish Mr. Kendall some money on condition that when I did so that he would set over to me certain accounts that he might have at that time, accounts to be mine, and that I would furnished up to $10,000, provided he would furnish that amount of accounts.

Cross 106. Did you tell Cornelius, at said conversation, anything about said accounts?

Ans. I told him the offer I had made his father.

Cross 107. Did you tell Cornelius, at said conversation, anything about said accounts?

Ans. There was no particular accounts mentioned, only he
252 must transfer accounts for the amount of money I should furnish him.

Cross 108. Did you tell Cornelius, that your offer to his father was upon condition that his father should transfer to you accounts?

Ans. I did tell him.

Cross 109. Did you not tell Cornelius, at said conversation, that you had offered to advance his father money, if he would take you into his service, or words to that effect?

Ans. I told Cornelius Kendall that I had offered to furnish his father $10,000, if he would give me $2,500 for my service, and transfer accounts to me, to the amount of money that I furnished.

Cross 110. What was the character of the service you proposed to furnish for the $2,500?

Ans. Occupy the same position that I had done in the store.

Cross 111. When did you make this proposal to his father?

Ans. I think it must have been the last of February, or the first of March.

253 Cross 112. Where?

Ans. At his office.

Cross 113. How many interviews did you have with him on this subject?

Ans. Two.

Cross 114. How many times were you in the store or office of Mr. Kendall during the months of February and March last?

Ans. I don't know that I can tell the number of times, it was only twice on that business.

Cross 115. Did you go to Mr. Kendall's office to talk on that business?

Ans. I went there twice to talk on it.

Cross 116. Of what length were your interviews on these two occasions?

Ans. The first one was short, the other might have been an hour, and it might have been less.

Cross 117. Who were present besides yourself and Mr. Kendall?

Ans. I think Mr. Coates, the book-keeper, was in the office;
254 there were some two, or three other persons coming in and going out, I don't know who.

Cross 118. Did you not have one or two interviews with Mr. Kendall in the front office, when no one else was present?

Ans. The front office is only a part of the back office, folding doors between them; that door never was shut when I was there on that business.

Cross 119. What was said about the aerated bread business upon these conversations?

Ans. At the first conversation there was nothing said; at the second, Mr. Kendall told me how many barrels of flour he was baking into aerated bread, and how many into crackers; and I estimated the amount that he could make in a year out of the two, and advised him, neither to repair his building, or to take a partner.

Cross 120. What did Mr. Kendall say on this occasion, as to the cost of making aerated bread?

Ans. He said nothing.

255 Cross 121. Did you not go with him on one of these occasions and examine the machinery?

Ans. I did not.

Cross 122. Did not you go with him on one of these occasions and examine the bread?

Ans. I did not.

Cross 123. When you were examining the bread with Mr. Kendall, did not he state to you in substance that there was one thing which could not be got away from him by other bakers?

Ans. I did not examine the bread with Mr. Kendall, and he did not say any such thing to me.

Cross 124. Did he say that to you at any time? and if so, when?

Ans. He never said it.

Cross 125. What else did you talk of during these conversations besides the matter you have detailed?

Ans. At the first there was very little, if anything, said besides making the propositions to Mr. Kendall; at the second, after
256 asking Mr. Kendall if he had made up his mind with reference to my proposition, he told me that he had not, for he had been thinking of marrying a certain wealthy lady in town, and that if he did, he expected to get money enough with her, so that he would need no assistance from me, or any one else. He asked my advice in the matter. I told him to marry the woman. He said that inasmuch as the scripture said that it was not good for men to be alone, that he thought he should marry the woman; and our conversation was in a jocose manner after that in reference to it.

Cross 126. What other subject was talked of?

Ans. I recollect nothing being talked about except my proposition, and the estimate I had made of his profits, and his getting married; with the exception that the first or second interview, there was something said about some little feeling that was had, about my going

out of the firm, of myself and his son; I cared nothing about it then, nor do I now; he said he cared nothing of it then, nor at that time.

257 Cross 127. Who introduced the subject of these difficulties?

Ans. I think I did.

Cross 128. What was said about Mr. Kendall's right to make the aerated bread on these occasions?

Ans. Nothing. The subject was not spoken of.

Cross 129. What was said about his having experimented before he attained success in making the bread?

Ans. There was nothing said about it.

Cross 130. What was said about his having failed in his first attempt to make bread?

Ans. Nothing said about it.

f Cross 131. What was said by him at any time about his having ailed at his first effort in making bread?

Ans. Mr. Kendall told me previous to this, at his store, that when he first commenced using his machinery it was out of order, and that they could not make good bread, and when they got it repaired and in good order they had no difficulty in making good bread.

258 Cross 132. Who did he say had put the machinery in good order?

Ans. He did not say.

Cross 133. What did he say of the instructions under which he commenced baking bread?

Ans. Nothing.

Cross 134. What did he say about Wick?

Ans. Nothing.

Cross 135. What did he say about Yankee?

Ans. Nothing.

Cross 136. What did he say about Cornelius Kendall?

Ans. Nothing.

Cross 137. Did he not say, on one of these occasions, or at some other interview, that Cornelius and Yankee had had excellent success in making aerated bread?

Ans. Mr. Kendall told me at some interview that Cornelious and Yankee had assisted in repairin the machinery, and had got it tight, and that Yankee was then making good bread.

Cross 138. At one of these interviews did not Kendall show you the bread that Yankee was making, or some of it?

259 Ans. I saw some of the bread at this time. I think he cut a loaf open.

Cross 139. Did he not there say that this was a thing that no one could get away from him, or words to that effect?

Ans. He did not.

Cross 140. Did he not at any time; and if so, when?

Ans. He told me in Mr. Woodman's office after I bought the patent, and that he had a contract for the patent, and that no one could get it away from him, and that he would bake the bread in spite of Hell.

Cross 141. Then he stated on this occasion that he had a contract. Did he not add, and you knew it, or words to that effect?

Ans. No, sir. He said nothing of the kind.

Cross 142. Did he not previously say that this was a thing, meaning the bread, that no one could get away from him, or words to that effect?

Ans. He never said anything of the kind to me.

260 Cross 143. How did Mr. Kendall estimate of the cost of making the aerated bread compare with his estimate of the cost of making other kinds of bread?

Ans. I don't know as he ever made an estimate; he never did in my presence.

Cross 144. I refer to the time when you and he were figuring out the profits of the bread.

Ans. Mr. Kendall and myself never figured out the profits of the bread. I made an estimate to convince him that he had better not repair his bakery, or take a partner, endeavoring to show by these figures that he could make enough in one year to repair his bakery, and run his business without assistance from any one.

Cross 145. Why did you propose this when you were just proposing to lend him $10,000?

Ans. I did not propose to advance him $10,000. I proposed to advance him money to the amount of accounts that he would transfer to me up to $10,000. I proposed to do that, because Mr. Kendall told me that had not money enough to run his business success-

261 fully.

Cross 146. What did Mr. Kendall say on this occasion about not wanting your money, unless he put the building up to grade?

Ans. He did not say anything about it.

Cross 147. Did not both he and Cornelius tell you they did not want your money unless they put the building up to grade?

Ans. They never told me any such thing, and I never offered to furnish any particular amount of money. They both told me that they wanted me to go into partnership with Mr. Kendall and furnish $15,000, and put the building up to grade, and made that a condition of my being a partner, and if I would not furnish the money to that amount they would not want me.

Cross 148. What was your proposal about going into partnership with Orrin Kendall?

Ans. I never made any proposal, but refused at all times to entertain their propositions.

Cross 149. When did Orrin Kendall propose to go into partnership with you?

262 Ans. I can't give the exact time when he made the proposition to me, but it was made several times by him and Cornelius.

Cross 150. Do you remember that he personally made such a proposition to you?

Ans. I do. He proposed some time during the month of March that I should put $15,000 into his business. He proposed during the month of April that I should take my patent and put into his Dearborn street bakery and run the business in connection with him. He

proposed that I should take my patent and put the machinery into his State street bakery and run the business in partnership with him, he furnishing the bakery and I the machinery and patent for making aerated bread.

Cross 150. Where were you when he proposed the partnership in March?

Ans. In this bakery. He afterwards talked to me abont it in Mr. Woodman's bakery.

Cross 151. Where was Orrin Kendall personally at the
263 time he made the proposition in March?

Ans. I think it was in his sales room.

Cross 152. Who was present besides yourself and Orrin Kendall.

Ans. I don't know of any one besides the clerks.

Cross 153. Who heard that proposal besides yourself?

Ans. I don't know that any one was present when Mr. Kendall made it. When Cornelius made it, it was in Mr. Woodman's office. He requested me to stay after business hours. I did so, and staid there with him from 8 o'c. until 10 o'c., he trying to convince me that it would be for my interest to go into partnership with his father.

Cross 154. Was this proposal before or after your proposal to enter his service?

Ans. After.

Cross 155. How long after your second interview with Mr. Kendall?

Ans. I can't recollect the exact time, but it was a short time.

Cross 156. Was this proposal in the bakery the first one
264 the year past to go into partnership with Mr. Kendall?

Ans. I am not certain, but I think that Cornelius had made the same proposition before.

Cross 157. How long before?

Ans. A short time.

Cross 158. Was it before or after your two interviews with Mr. Kendall, to go into his service?

Ans. After.

Cross 159. Did you know that Mr. Kendall (before or after your two interviews) desired a partner?

Ans. I think that Mr. Kendall told me at one of those interviews that he had thought of taking a partner and had had offers from two or three parties to put in $15,000 capital; that they were very good men, but that they did not understand the business, and he had declined to take them on that account.

Cross 160. Did he say that he desired a partner at that time?

Ans. I don't think he did.

265 Cross 161. Did he not say that Mr. Skinner, of the firm of Munson & Skinner, had offered to put in $20,000, if Mr. Kendall would admit him into partnership, and that another gentleman had offered a larger amount to be admitted into partnership, but that he had refused both, because he did not wish a partner.

Ans. Mr. Kendall told me that Mr. Skinner had offered to put in

$15,000 and go into business with him, and that other parties had made similar propositions, but that he had refused to take them, for he did not like the men as partners, for they knew nothing of the business.

Cross 162. Was not one of the reasons for refusing them, that he did not wish a partner?

Ans. He gave no such reasons to me.

Cross 162. What did he say on this occasion about raising a building up to grade.

Ans. I don't recollect that he said anything.

Cross 163. What had he said previously on the subject?

266 Ans. I think the conversation about raising the building was after that. We might have talked something about it at the time; if we did it was an incidental talk and did not relate to the business for which I went there.

Cross 164. Was this your first or second interview about going into his service.

Ans. It was my second.

Cross 165. If anything was said at the two interviews about going into his service, about raising the building up to grade, you don't remember it, do you?

Ans. I think Mr. Kendall told me he designed to raise his building. I don't remember particularly.

Cross 166. Do you remember what you said about it. If I said anything, I advised him not to raise it.

Cross 167. Do you remember that you said anything.

Ans. My impression is that I did, but I have no recollection of it (positive.)

267 Cross 168. Did you tell Cornelius at your interview with him, at the offer of Mr. Woodman, that his father had proposed to go into partnership with you.

Ans. I think I told Cornelius so, but that neither he nor his father need make any propositions about my being a partner, for I would not go into partnership with him, or have any business transactions with him, unless it was in such a way that I could have full control of such funds as I might furnish, and that I would not go into partnership under any circumstances whatever.

Cross 169. Are you sure that you told him on this occasion that his father had proposed to go into partnership with you?

Ans. I am.

Cross 170. Did you not tell him (Cornelius) on this occasion, or on the side walk in front of his store, that if his statements of the profits of the business were correct, that you would like to go into business with him and put in $10,000?

268 Ans. I told Cornelius Kendall that I had been a partner of his father one year, and that he had drawn more money in two months than he was entitled to draw for a year; that he had used the firm's name to endorse his own individual paper unbeknown to other members of the firm, contrary to the articles of copartnership, and that it was impossible then for me to get out of the firm with the

money that I put in (and with difficulty that I could get his father out) and that I never would again be a partner with him. I did not tell him that I would put $10,000 into the firm under any circumstances.

Examination adjourned to June 28, 1865.

Examination of Joseph M. Dake resumed June 28, 1865.

Cross 171. Where were you when you made the statements detailed in your last answer?

Ans. In Mr. Woodman's office.

Cross 172. Did you not say that if his statements were correct you would like to put in $10,000 and go into partnership
269 with his father?

Ans. I never told him there, nor at any other time, that I would go in, or that I would like to go into partnership.

Cross 173. Did you not make that statement in front of his father's bakery?

Ans. I never said the statement in front of his father's bakery, or at any other place.

Cross 174. Who sought the interview at Woodman's bakery, you or Cornelius?

Ans. He sought it.

Cross 175. When, and how?

Ans. He came to the bakery and requested me to stay after business hours, that he would be there with some figures to show the advantage of his father's raising and repairing his bakery.

Cross 175. Had you not previously proposed an interview?

Ans. I had had an interview with him previous to that
270 time. He came to me and told me what he wanted, and wanted to know when he could see me about it. I told him that he could come at any time and I would be in the bakery, and advised him not to come at business hours, because it would be difficult for me to have any lengthy talk with him during business hours.

Cross 176. Where did this first interview take place?

Ans. I don't recollect whether I saw him on the street, or whether I met him in Mr. Kendall's bakery.

Cross 77. Did it not take place directly after one of your conversations with his father?

Ans. It took place after an interview with his father.

Cross 178. Who introduced the subject, you or Cornelius?

Ans. I never, at any time or in any place, made a proposition, or introduced the subject of going into partnership with Orrin Kendall, either to Cornelius Kendall or to Orrin Kendall; all the propositions that ever was made on that subject came from them to me.

271 Cross 179. Who commenced the conversation, you or Cornelius?

Ans. If there was any conversation commenced by any one on that subject it was commenced by Orrin Kendall or Cornelius.

Cross 180. Who commenced the conversation on that occasion, you or Cornelius?

Ans. He commenced it.

Cross 181. Was this before or after his father had proposed a partnership with you?

Ans. I think Cornelius proposed it before his father. I don't recollect when.

Cross 182. Did he propose it before this conversation in the bakery, or on the sidewalk?

Ans. I don't recollect whether that was the first conversation on the subject or not.

Cross 183. When and where did the first conversation with Cornelius take place?

Ans. I don't recollect where.

Cross 184. Do you remember any earlier than that on the sidewalk, or in Mr. Kendall's store?

272 Ans. After I had a conversation with Mr. Kendall in reference to my working for him on a salary, Cornelius told me that he was opposed to it, because he wanted to make an arrangement with some one to get money, so as to raise and repair the building, and told me that he wanted to see me about it. I think that was before the conversation at the bakery, but I am not sure as to that.

Cross 185. Is it not your best impression that that was the conversation which the interview in Woodman's bakery was appointed for?

Ans. I could not say; he spoke to me a number of times on the same subject.

Cross 186. Did you not introduce the conversation at which Cornelius spoke of raising the building by informing him of your proposal to his father?

Ans. I never introduced any conversation at any time in that way.

Cross 187. How long after the conversation with Cornelius, at which the interview at Woodman's office was proposed, did

273 that interview take place?

Ans. I don't recollect how long it was.

Cross 188. Was it the same day?

Ans. It might have been the same day.

Cross 189. What interview did you have with Orrin Kendall in the interval?

Ans. It is difficult for me to tell the order in which the several interviews I had with either one, or both of them, took place.

Cross 190. Do you remember you had interview with Orrin Kendall in the interval between that you had with Cornelius at Woodman's bakery, and the one with him immediately preceeding?

Ans. I don't remember whether it was before or after, but I recollect I had one; my impression is that it was before.

Cross 191. Can you not recall any part of the conversations with Cornelius at Woodman's bakery which will refresh your recollection?

Ans. I think I talked with his father previous to that time.

Cross 193. Was there anything in your conversation with

274 Cornelius that induces you to think so? And if so, what?

Ans. I can't recollect any conversation that I had at that time that makes me recollect one portion of the conversation more than another.

Cross 194. Don't you remember telling Cornelius at the interview at Woodman's bakery that his father had proposed a partnership with you?

Ans. I may have told him so, or I may not.

Cross 195. That is your best recollection about it?

Ans. I know that at some time I told Cornelius that his father had proposed that to me, but whether it was at that time I don't know.

Cross 196. How long was the interview at Woodman's bakery?

Ans. I think it was from 8 o'c. to 10 o'c. in the evening.

Cross 197. Who was present besides you and he?

Ans. Not any one.

Cross 198. Why did you consent to this interview if you
275 had no intentions of going into partnership with Mr. Kendall?

Ans. I don't know that I had any particular reason, except as a matter of courtesey to Cornelius.

Cross 199. Had you previously told Cornelius that you would not go into partnership with his father?

Ans. I think I had.

Cross 200. Do you know that you had?

Ans. My impression is that I had.

Cross 201. Do you know that you had?

Ans. I know that I had told Cornelius Kendall that I would not go into partnership with his father; I would not say positively whether it was before or at the time. I think I had told him so.

Cross 202. Did you tell him so early in the interview, or at the latter part of it?

Ans. I don't recollect.

Cross 203. What figures did he bring to convince you that it was for your interest to go into partnership with his father?

Ans. He told me that he thought I might get a big interest for the use of my money that I might put in; the figures that he used
276 were principally to shew me what could be saved in fuel and labor, provided the building was raised and new machinery put in.

Cross 204. Did not his figures include the cost of making aerated bread?

Ans. No, sir; he never made any figures with me in reference to aerated bread. All the figures that were used I made myself.

Cross 205. Did he say anything about aerated bread at this interviews? and if so, what?

Ans. When I showed him what I thought they were making on their bread and crackers to convince him that he had better not have a partner, or raise their building, he might have said something about the bread; if he did, I don't recollect what it was.

Cross 206. At that time, did you know that carbonic acid gas was used in making this bread?

Ans. I knew nothing about it.

Cross 207. Did you know that machinery was employed in making it?

277 Ans. I heard Cornelius Kendall say that their damned old machinery leaked so they could not do anything with it, and that he had got a three way-cock that I would get patented that would supersede what they then had at that time. I had not seen any machinery for making aerated bread.

Cross 208. Did you, at that time, know whether the machinery was propelled by steam and by hand?

Ans. From any personal knowledge of my own I know nothing about it.

Cross 209. Had not Cornelius informed you how it was propelled?

Ans. He had not.

Cross 210. Had any one, and if so, who?

Ans. I knew nothing of it from any source.

Cross 211. Had any one, and if so, who?

Ans. I had no knowledge of aerated bread from any one at that time.

Cross 211. Had any one informed you that the machinery for making aerated bread was propelled by steam at that time?

Ans. I had not been so informed by any one.

Cross 112. When Cornelius spoke of the machinery being leaky, did he not say that he desired to get new machinery for the purpose of making aerated bread?

Ans. He did not say anything of the kind to me.

278 Cross 213. Did he not, in the figures he submitted to you, demonstrate, or attempt to demonstrate, that the power necessary to run the aerated bread machinery would be obtained at less expense if the improvement he suggested was made?

Ans. He did not.

Cross 214. In what manner did he expect to economize by the proposed improvement?

Ans. He said in fuel and labor.

Cross 215. Did he submit to you the figures to show the expense in the manner the business was then conducted?

Ans. He said they could save $4,000 per annum in fuel and labor.

Cross 216. Did he speak of the purpose for which the fuel was applied?

Ans. If he did, I don't recollect; he might have done so.

Cross 217. May he not have spoken of it as necessary to obtaining the steam in making aerated bread?

Ans. I don't think he said anything about aerated bread.

Cross 218. Did he mention the name of John Pendleton at this interview?

Ans. I never heard of John Pendleton's name, but sometime afterwards.

Cross 218. Did he mention the name of John Pendleton at that interview, or on the side walk.

279 Ans. He never mentioned it. I never even heard him or his father mention John Pendleton's name, until I heard Orin

Kendall say, on the 20th day of April, after I had bought and paid for the patent, that John Pendleton was a white headed, oil, old scoundrel.

Cross 219. Did Cornelius Kendall show you the figures he brought with you at Woodman's bakery?

Ans. He had the figures on the desk. I had no confidence in them, and paid no attention to them.

Cross 220. Did he give you any details of the cracker business?

Ans. He did not give me any details of any part of the business, cracker or anything else.

Cross 221. Please state what was said on that occasion.

Ans. I can't recollect all that was said at that time. The substance of it, was that he wanted me to go into partnership with his father, put in $15,000 in cash, raise the building and repair it, and help conduct the business. I said, as I have already detailed, that I would not go into business with his father.

Cross 222. When did your conversation about patent right at St. Louis take place with Cornelius?

Ans. I never had any one with him, either at St. Louis or any other place.

Cross 223. When did your conversation with Yankee upon that subject take place?

280 Ans. When Mr. Pendleton was here, he told me, that he owned the patent for Cincinnati and St. Louis. He told me what he would take for each city. I took the refusal of those two cities, he agreeing not not to sell them to any one until I gave an answer whether I would buy them myself. Cornelius went to Cincinnati after that and wrote a letter to Yankee, and told him that he had bought the patent for St.Louis, or had got the refusal of it. Yankee showed me that letter. I showed Yankee one from Mr. Pendleton, saying that a party had applied to him for the patent; that he had refused to sell it, or give the refusal of it without my consent. I told Yankee that I had just written Pendleton that I would waive my right or claim, and that he might sell it to Mr. Kendall.

Cross 224. Was that your first conversation about the patent in St. Louis with Yankee?

Ans. It was.

When did you obtain your first information as to the manner of making aerated bread, and from whom?

Of the patent issued by the United States, and signed by Jake Thompson, a rebel.

Cross 225. Had you all previously talked about it with Yankee?

Ans. I may have said something about aerated bread to

281 Yankee, but he never told me how to make it.

Cross 226. Did you ever talk to him about it before Woodman went to Cincinnati?

Ans. I never talked to any one except Woodman.

Cross 227. Did Yankee know that Woodman had gone to Cincinnati the first time?

Ans. He did not from me; I don't think Mr. Woodman told him.

Cross 228. Did he know that Mr. Woodman had been to Cincinnati before the 20th of April, 1865.

Ans. I don't know that he had any positive knowledge of it or not.

Cross 229. Did Yankee see that contract between Mr. Woodman and Mr. Pendleton before the latter came here, April 20th, 1865?

Ans. He may have seen it; I don't know positively whether he did or not.

Cross 230. Don't you know that you showed it to him?

Ans. I don't think I did; I may have done so.

Cross 231. Did you not talk with Yankee about Mr. Pendleton and this patent, and Mr. Kendall's aerated bread business, before Mr. Woodman returned from Cincinnati?

Ans. I don't recollect that I did.

Cross 232. Don't you know that you did?

No, sir.

282 Cross 233. What did you offer Yankee to induce him to come and see you, and tell you about the cost of making aerated bread?

Ans. Not a cent.

Cross 234. What did you offer Yankee to induce him to leave the service of Kendall and enter your employ?

Ans. I never asked him to leave Mr. Kendall, and never offered him anything to do so, nor no one else that ever worked for Mr. Kendall.

Cross 235. How many persons who were in the employ of Mr. Kendall a short time ago, do you now employ, and what are their names?

Ans. I think every man, except two or three, that Mr. Kendall has had to work for him, have been importuning me for a chance to work for me. I have invariably told them that when they are out of a job if I wanted any help I would hire them, with the exception of one man. I never asked them what wages they were getting nor told them what I would pay them. I think five of the men, who formerly worked for Mr. Kendall, now work for me; C. B. Ayer, John Rafferty, T. Berry, and Ford and Wesley Smith, are the four.

Cross 236. Have you not employed David O. Shay?

Ans. I have not; he never worked a day for me.

Cross 237. Is he not employed in Woodman's bakery?

I believe he is at work for Mr. Woodman.

Cross 238. Has he not with him the entire force formerly

283 employed by Mr. Kendall in baking loaf bread?

Ans. I don't know; I understand that some of them have worked for Mr. Kendall; I don't know but they all have.

Cross 239. Is not C. B. Ayer, the one referred to in the examination, as Yankee?

Ans. He is.

Cross 240. Did Yankee importune to enter your employ?

Ans. Yankee told me he intended to make aerated bread business

his business, and if I had got the patent and intended to make the bread he wanted to, and would, work for me.

Cross 241. When did Yankee first know that you proposed to buy the patent?

Ans. After we had bought it, as far as I know.

Cross 243. Did you speak to Yankee, during the last Spring, in Kendall bakery?

Ans. If I met him, I spoke to him, for I think a great deal of him, not only because I think he is a gentleman, but because he was instrumental with others in my employ in giving me a very nice gold-headed cane.

Cross 243. Did you not visit him at his room, or in the aerated bread apartment after business hours during last Spring, and before the patent was bought?

Ans. I think I never did; if I did I have no recollection of
284 it. I was there after I bought it by invitation of Yankee, after I had closed Mr. Woodman's store, for the purpose of seeing him bake aerated bread.

Cross 244. Did he make aerated bread in your presence on that occasion?

Ans. He was drawing dough from the kneader.

Cross 245. When and where did he invite you to the interview?

Ans. The store of Mr. Woodman, the same evening before he went to work.

Cross 246. Are you sure this was after you bought the patent?

Ans. I had never seen a loaf of aerated bread made previous to that time. It was after I bought the patent.

Cross 247. Was it before or after the 20th of April, 1865? if after, how long?

Ans. It was after; I can't tell how long.

Cross 248. Did he not invite you to come and see them make aerated bread at the time you showed him the contract, the 17th of April?

Ans. I did not show him any contract, nor did he invite me.

Cross 249. Well, then, when Woodman showed him the contract in your presence?

285 Ans. I don't know that Mr. Woodman showed him the contract.

Cross 250. Did he not give you this invitation at the time he first saw the contract, and talked with you about it?

Ans. He may have seen the contract at that day; I don't know positively that he ever did.

Cross 251. When did he tell you, if you were going to have the right to make aerated bread, he wished to work for you?

Ans. After I bought the patent; after the 21st of April, 1865.

Cross 252. How long before you bought your patent did you have your first interview with Yankee at Woodman's office?

Ans. I have no recollection of having any interview with him before I bought the patent.

Cross 253. How long before you bought the patent did you have

your first interview with Yankee, in which the patent was referred to.

Ans. I never had any such interview with him, nor any body else.

Cross 254. How long before you bought the patent did the first interview with Woodman and the Yankee take place, in which
286 the patent was referred to, in your presence?

Ans. They never had any such interview in my presence.

Cross 255. How long before you bought the patent did you have your first interview with Yankee, at which the mauufacture of aerated bread was referred to?

Ans. I don't know that I had any interview with Yankee on that subject previous to my purchase of the patent.

Cross 256. What is your best recollection on that subject?

Ans. He may have mentioned aerated bread to me, but I never had or sought an interview with him with reference to aerated bread, or the patent for making it.

Cross 257. What did he say about it?

Ans. I don't know what he said.

Cross 258. When did you have your first interview with Yankee at Woodman's office before you bought the patent?

Ans. I have no recollection of having had any interview with him before that time, as I have before stated.

Cross 259. When and where, during last Spring, did you have your first interview of any length with Yankee before you
287 bought the patent?

Ans. I have no recollection of having any interview with him of any length; I never went to see him for the purpose of having an interview, and don't know that he ever came to see me for that purpose.

Cross 260. When during last Spring, before you bought the patent, did you see Yankee in conference with Woodman?

Ans. I never saw him in conference with Woodman, before or after that time.

Cross 261. When did you first propose to Yankee to enter your employ?

Ans. After I bought the patent; I don't recollect the date.

Cross 262. Was that the occasion when he said if you were going to have the patent he wished to enter your employ?

Ans. I don't recollect whether it was or not.

Cross 263. How many interviews did you have with Yankee on that subject?

Ans. I don't know.

Cross 264. Did you have five?

Ans. I don't know but I may have had that number, and may be nine.

Cross 265. What wages did you offer Yankee?

288 Ans. I never offered him anything until he had agreed to work for me.

Cross 266. Did he agree to work for you before he knew what wages he was to receive?

Ans. Yes, sir; so did every other man now to work for me, who were with Kendall.

Cross 267. What did you say to him about the position being as good to him as the one of $15,000.

Ans. I did not say anything of the kind to him.

Cross 268. What did you say to Yankee about doing well by him before agreeing to work for you?

Ans. I did not say anything of the kind. I did tell Yankee after he had agree to work for me, that after I had had a chance to get a portion of the money out of business I had invested in, I would give him a chance to make some money, and I don't know but the sum of $15,000, may have been mentioned; that was on condition that he took charge of the bakery, and I have no trouble with it at all; my health was poor and I did not want to be annoyed with business.

Cross 269. How long was this after you bought the patent?

Ans. I can't tell; it was after I bought the patent.

289 Cross 270. Did he leave Mr. Kendall immediately after this, or did he remain for a time? and if so, how long?

Ans. He remained with Mr. Kendall till a week ago last Sunday night. Mr. Kendall, I believe, made him work all day of Sunday. He remained sometime after the conversation alluded to. I don't know how long it was.

Cross 271. Did you receive a note from him after this conversation? and if so, when?

Ans. I received a note very soon after.

Cross 272. Please append the note, or state the contents.

Ans. I have not the note. I will give you the contents. He told me he had worked for the Kendall's some 8 or 9 years; had worked hard and lived poor, and that he then owed him about $50, and if I would lend him the money to pay it, they might all go to hell together.

Cross 273. Did he say that he owed Kendall, or that Kendall owed him?

Ans. He said that he owed Kendall.

Cross 274. Was that the only note you have received from Yankee on that subject.

Ans. I don't know what subject you refer to.

290 Cross 275. Upon the subject of going to work for you?

Ans. I think Mr. Ayers wrote me one letter previous to that.

Cross 276. Please append that letter.

Ans. I have not that letter.

Cross 277. What have you done with it.

Ans. I don't know; I did not consider it of importance, and did not preserve it.

Cross 278. What did it contain?

Ans. I think that he said that Mr. Kendall had got him in the office, and wanted him to swear and take an oath that he would not work for me, and that he would work for him. He did so swear by saying that he would work for him so long as it was consistent for him to do so; that is the substance of the letter.

Cross 279. Are those the only two letters you have received from Yankee about going to work for you?

Ans. No, sir; I received another letter which I have not got, and

which I did not preserve, in which he stated the position in which he was placed in reference to Kendall; that he believed he
291 should continue to work for them and not for me.

Cross 281. Was this note received before the conversation in which you spoke of the $15,000?

Ans. After.

Cross 282. In what department was Yankee employed by Mr. Kendall?

Ans. As far as I know he was baking aerated bread.

Cross 283. How long before you employed him did you know that he was baking aerated bread?

Ans. It must have been some few months.

Cross 284. How long before you bought the patent did you know he was baking aerated bread?

Ans. For some length of time; I can't tell how long?

Cross 285. How did you know he was baking it?

Ans. He told me so.

Cross 286. Where were you when he told you so?

Ans. I don't know.

Cross 287. What did he say about it?

Ans. I don't know what he said about it.

Cross 288. Did he say anything about the success?

Ans. He told me nothing about it.

Cross 289. Did he tell you anything about it, except that he was making it?

292 Ans. I think I met him and asked him what he was doing, and he said he was making aerated bread.

Cross 300. In what part of Mr. Kendall's place is the machinery for making aerated bread?

Ans. In the hall, I believe.

Cross 301. Is it on the same floor with the salesroom, and how far from it?

Ans. It can't be over two or three feet from the door?

Cross 302. When you were visiting the store and office during last spring, about the time you proposed to go into the service of Mr. Kendall, did you not some time go into this hall where the aerated bread machinery is?

Ans. I think I was in there once, but the machinery was not running. I stepped in and right out again.

Cross 303. Did you see the machinery at that time?

Ans. I saw machinery, but I did not know a gas generator at that at that time from a gas receiver, and a gas receiver from a meter. I knew nothing of the machinery whatever.

Cross 304. Did you go alone?

293 Ans. Mr. Kendall might have gone with me and might not.

Cross 305. Did he not show that to you, or the machinery with which he made aerated bread?

Ans. I have no recollection of his saying anything to me about it.

Cross 306. Did you then know or suppose that it was used for making bread?

Ans. I knew they were making aerated bread, and I supposed that was the machinery?

Cross 307. Was there any belting there showing that the machine was connected with an engine?

Ans. There might have been, but I did not notice it.

Cross 308, Did you not know or suppose that steam power was employed in carrying on that machinery?

Ans. I did not know anything about it, and did not suppose anything.

Cross 309. Was that the only time you ever saw that machinery before you bought the patent?

Ans. I saw it as I was passing on the street I supposed it was the same. I never saw it operate until I had bought the patent.

294 Cross 310. Did not you see the belting, or some of it, connected with that machinery, either at that time, or at the bakery?

Ans. I never noticed any belting of the machinery at any time. I never went there to inspect the machinery at any time. I never went there to learn anything about the machinery at any time. I never went there to learn about making aerated bread at any time. I never went there to learn anything about the patent at any time. The only object I ever had in going there, was to see Yankee make some bread; and went because he invited me to go, and for no other reason.

Cross 311. Did you not go to see the machinery, at the time Mr. Kendall cut open a loaf of aerated bread, and showed it to you?

Ans. I had no object whatever in going into the room; the door was open. I stepped in, and immediately came out of it. I asked no questions about the machinery, and was told nothing; it was at that time.

Cross 312. Why did you suppose that was the machinery for making aerated bread?

295 Ans. I don't know anything about it, and don't care anything about it. I took it for granted that that was the machinery.

Cross 313. How did you take it for granted that that was the machinery, if you had not been told about it?

Ans. I don't know.

Cross. 314. Are you quite sure that Mr. Kendall did not tell you that that was the machinery?

Ans I have no recollection of his saying anything about it.

Cross 315. Was there not a large amount of belting connected with that machinery, in point of fact, extending, in one place, nearly to the ceiling?

Ans. There may have been. If there was, I did not see it, or did not notice it.

Cross 316. Why did you wish to enter the service of Mr. Kendall, at that time?

Ans. I was out of business, and thought I would like to be making a

living; didn't want to go into business on my own account; had refused to go into business with Mr. Woodman, and did not mean to go into business on any consideration whatever. I told Mr. Kendall so at the time.

Cross 317. Were you not, at that time, in the employ of Mr. Woodman?

Ans. I was. Before I went to see Mr. Kendall I spoke to
296 Mr. Woodman about my going there; told him that I did believe he could afford to pay me as much wages as he had agreed to, and that if he had no objections, I would go and make Mr. Kendall the offer, and if he had any objections to my doing it, I would not go. He consented to my doing so; released me from all obligations, so far as working was concerned. I then went to Mr. Kendall; made the offer to him, in good faith, to work for him for $2,000 a year; and that I would furnish him with as much money as he could transfer good accounts to me, up to $10,000.

Cross 319. Are you sure you never talked with Yankee about the patent before you bought it?

Ans. I am sure I never did.

Cross 320. In what department was John Rafferty employed?

Ans. General porter, I think. He is a competent man, and well educated.

Cross 321. Was he a useful man to Mr. Kendall?

Ans. He was useful to me when I was there. I don't know what he was to Mr. Kendall.

Cross 322. Was he not the smartest man in Mr. Kendall's employ?

Ans. I think he was. I knew him four years, while he was
297 there, and I never knew him make but one mistake.

Cross 323. When did he agree to work for you?

Ans. I think it was week before last.

Cross 324. How long were you in treaty with him, directly or indirectly, before he agreed to come?

Ans. I never was in treaty with him, either directly or indirectly. His brother, Alderman Rafferty, came to me and told me that John, his brother, wanted to work for me, provided I would give him a job. I told him I thought a great deal of John, and when I had employment for any man John would always have the preference. I told his brother to tell him he could come. I have never made any bargain with him for wages, and never asked him to work for me, and never agreed to pay him anything if he did work for me.

Cross 325. Where did you see Alderman Rafferty?

Ans. At my bakery. He was doing a job of plumbing for me.

Cross 327. Who first spoke of John's coming to work for you?

Ans. He did, I think.

Cross 328. Are you certain?

Ans. I am certain that he mentioned the subject of John's working for me before I did to him; and he told me that John told him he wanted to come and work for me.

Cross 329. Had you not talk with John before about it?

298 Ans. I think I told him once that I hated Irishmen, and

did not mean to hire any more. His reply was, that he liked my kind of hate. That was all I ever said to him.

Cross 330. What had been said that induced the remark?

Ans. I think nothing.

Cross 331. How long after the Alderman conversation did John agree to come to work for you?

Ans. It was but a short time.

Cross 332. Was John in Mr. Kendall's employ when he agreed to work for you?

Ans. He never agreed to work for me at all; hasn't to this day.

Cross 333. How did he come to be in your employ?

Ans. He came there and told me me had quit Mr. Kendall, and I asked him why he had done so, and he said it was a matter of choice to himself. I asked him if he wanted to work for me, and he said he did. I told him to take off his coat and go to work. I never agreed to give him a cent, and he never agreed to work for me.

Cross 334. Did he tell you at that time that he had informed Mr. Kendall that he was going to leave?

Ans. He did; he said he told Mr. Kendall that he was going to work for me, as a matter of choice.

Cross 335. When did Thomas Beerford agree to work you?

Ans. I should think two or three weeks ago.

299 Cross 336. Was he in Mr. Kendall's employ at the time?

Ans. He told me he was.

Cross 337. What did he do?

Ans. I think he run one of the ovens for making aerated bread.

Cross 338. Who asked him to come to you?

Ans. I don't know.

Cross 339. Where was you when you first saw him?

Ans. At Mr. Woodman's bakery?

Cross 400. Did you then invite him to come?

Ans. Not to my knowledge. Mr. Beerford came to me, and told me that he was at work for Mr. Kendall on night watch, and said that his health was so poor he could not stand it, and wanted to know if I could give him a chance on the day watch when I got my bakery done. I told him I would. He said nothing about wages, nor did I. I paid him one week's wages, $15 00. He went off satisfied, and no questions asked. I think I told him at the time when I paid him when I got to baking, that if he could convince me, he could earn more money than that I would give him more.

Cross 401. How long did he work for Kendall after he agreed to come to you?

Ans. Some little time; but I can't tell how long.

Cross 402. When did Smith, the engineer, agree to come to work for you?

300 Ans. I can't tell how long; some little time.

Cross 403. Was he in Kendall's employ before he agreed to work for you, and if so, in what capacity?

Ans. He said he was as engineer.

Cross 404. Did he not also employ him to run the aerated bread machine?

Ans. I think at the time I hired him he told me he had never done it, but thought he could.

Cross 405. How long did he stay with Mr. Kendall after you hired him ?

Ans. Some little time; I don't recollect how long.

Cross 406. Didn't he stay with Mr. Kendall after that, for the purpose of running the aereted bread machine under Yankee's instructions ?

Ans. I don't know what he staid for, or what his purpose.

Cross 407. Did he not run the aereted bread machine after you hired him (for Mr. Kendall?)

Ans. I think he told me he had.

Cross 408. Where were you when you agreed tc hire him ?

Ans. In Woodman's bakery.

Cross 409. How did he happen to be there.

Ans. I don't know. He came and wanted to hire out to me; that is all I know.

Cros 410. Did not Yankee invite him to that interview ?

Ans. Not to my knowledge.

Cross 411. What was said about wages when you hired Smith ?

301 Ans. I never spoke wages when I hired Smith, and I never have to this day. He never asked me what I would give.

Cross 412. Did you ever have conversation with Mayhew about coming to work for you ?

Ans. No.

Cross 413. Did you with Burke ?

Ans. I went in a saloon with him, and take a glass of beer with him, and told him I would not hire him, for I was not going to hire any of Kendall's men.

Cross 414. Did not Woodruff slap Burke on the shoulder at that time, and say: "Yankee, Dake's the best man for you to work for."

Ans. I guess Mr. Woodruff said words to that effect.

Cross 415. Had Woodruff been working for you at that time ?

Ans. He had been working on an oven for me.

Cross 416. Have you had any conversation with John Lyon about coming to work for you ?

Ans. Never a word.

Cross 417. Did'nt Yankee state, either verbally or in writing, that he had a written contract to work for Kendall for a year, and that that contract was unexpired ?

(Mr. Goudy here, as counsel for the witness Dake, advises him that he may refuse to answer that, and all such similar questions,
302 as you have answered for the last three hours, the same not having any connection with the matter in controversy in this case, and are a violation of the privilege allowed counsel in taking deposition, and proposed for the evident purpose of prying with matters for some improper purpose.)

Ans. I refuse to answer to that question.

Cross 418. Did you not, before you bought the patent, talk with the

various pe sons whom you have hired, who were previously in Mr. Kendall's employ, or with some of them, about the manner in which Mr. Kendall conducted the aerated bread business?

Ans. I never had any such conversation vith any such persons.

JOS. M. DAKE.

Subscribed June 29, A. D. 1865, before me.

H. W. BISHOP JR,
Master, &c..

303 *Deposition of John E. Woodman.*

Examination of John E. Woodman:

JUNE 26*th*, 1865.

Int. 1. What is your name, age, and residence?

Ans. My name is John E. Woodman; I reside in Chicago; my age is forty years.

Int. 2d. Look at the assignment now shown you, marked "Exhibit one," and state whether or not you are the subscribed witness.

Ans. I have examined the "Exhibit one" inquired of, and I am the subscribed witness thereto, and that is my signature.

Int. 3. State whether or not said assignment was executed by Charles L. Woodman.

Ans. It was.

Cross-examination by Mr. Woodbridge:

Cross 1. Did you see Charles L. Woodman execute that assignment?

Ans. Yes, sir; when, I don't remember. I think it was the same date of this. He came into my place, and asked me to witness it.

304 JOHN E. WOODMAN.

Subscribed June 26, A. D. 1865, before me.

H. W. BISHOP,
Master, &c.

305 Examination of Charles L. Woodman.

Dep. of Chas. L. Woodman.

And the said Charles L. Woodman, having been by me first duly cautioned and sworn to make true answer to such questions as might be put to him under the direction of the master, upon examination, made answer as follows:

Int. 1st. What is your name, age, residence?

Ans. My name is Charles L. Woodman; my age is thirty-six years; and reside in Chicago.

Int. 2. Are you the same person who purchased from John Pendleton, the patent-right for preparing and raising dough for making aerated bread in this county, and assigned the same to complainant?

Ans. I am.

Int. 3. Did you know, before you made the contract with Mr. Pendleton, what right, if any, the defendant had to manufacture and sell that kind of bread?

Ans. I did not know that he had any right whatever.

Int. 4. Did you have any information tending to show that
306 he had a right to use said patent in this county, except the fact that he was baking the bread?

(Objected to.)

Ans. I did not.

Int. 5. At what time did you first learn that the defendant claimed to have a contract for the purchase of said right?

Ans. On the 20th of April, 1865, about 6 o'c. in the afternoon.

Int. 6. At what time did Mr. Pendleton deliver his assignment to you, and when was the consideration therefor paid to him?

Ans. On the 20th day of April, 1865, between the hours of 12 and 1 o'c.

Int. 7. Who informed you, on the evening of the 20th of April last, of the claim of defendant.

Ans. The defendant himself.

Int. 8. State what brought about the interview in which you received such information?

Ans. About 5 o'c. on the 20th of April I wrote Mr. Kendall, saying that I had bought the right of making aerated bread in this county, and that I would purchase his machinery for making the same at a fair price, if he wished to sell it, or words to that effect.

307 Int. 9. At the time you sent said note, did you have any expectation or suspicion that the defendant would assert the right to use the patent?

(Objected to.)

Ans. I did not.

Int. 10. What statements, if any, did you make to Mr. Pendleton, in regard to the defendant, either as to his character or solvency, before closing the contract on the 17 day of April last?

Ans. Not a word, to my knowledge.

Int. 11. Did you, in any way, endeavor to affect the mind of Mr. Pendleton in regard to defendant, in order to induce Mr. Pendleton to sell you the patent?

Ans. I did not, in any way.

Examination adjourned to the 30th.

JUNE 30TH, 1865.

Examination of Charles L. Woodman resumed:

Cross. By Mr. Woodbridge:

What business relations do you sustain to complainant?

Ans. He acts as clerk for me at present, and nothing more.

Cross 2. What connection have you with the bakery now
308 being fitted up for the manufacture of aerated bread in the city?

Ans. At present I have not any.

Cross 3. What agreement have you with said Dake in relation to the same?

Ans. I have none, except verbally—that I am to be interested with him in the business.

Cross 4. Do you expect to participate in the profits?

Ans. We expect to go into a general baking business.

Cross 5. When did you first see John Pendleton?

Ans. I saw him for about 15 minutes the first of June, 1864, for the first time in my life.

Cross 6. Where?

Ans. At my bakery, in the north division.

Cross 7. Did he come to your bakery alone? and if not, who came with him?

Ans. He came there alone.

Cross 8. Did he introduce himself, or did he bring some one with him?

Ans. He introduced himself.

Cross 9. What was his errand?

Ans. He said he had a right for making aerated , which he wanted to sell to some baker in Chicago.

Cross 10. Did he refer to this bread in dispute?

Ans. He did not refer to any bread, though I suppose he meant this.

309 Cross 11. How long was the interview?

Ans. From ten to fifteen minutes; perhaps not over five. The reason for being so short was, that the bakers were having a strike, and I was at work myself.

Cross 12. Did he propose to sell you the right? and if so, at what price?

Ans. He told me he had the right for sale. I told him that I had no place that was suitable for it; and he told me he thought so too, and did not advise me to buy the right. Nothing was said about the price.

Cross 13. Had you ever heard of this mode of making bread before?

Ans. I had seen it made before I had seen Mr. Pendleton.

Cross 14. When and where?

Ans. In Milwaukee, about two weeks before; nowhere else.

Cross 15. Had you given it an examination?

Ans. I gave it no examination, otherwise than I was at Milwaukee, and went into Mr. Follansbee's bakery, and Mr. Weeks, foreman of the shop, mixed a batch of bread and put it into the oven while I was there; that is all that I know about it. I see then that it
310 required a good deal of machinery, and that my place was not suitable for it, and I had not the means for procuring it.

Cross 16. Did you talk with Weeks about the process by which it was made?

Ans. He showed me a half an hour the process of making it.

Cross 17. Did he tell you that the process was patented?

Ans. I don't think he said anything about it at that time.

Cross 18. Did you see anything of the bread at that time?

Ans. I did. I saw it the year before.

Cross 19. How did it compare with that made thereabouts.

Ans. I think it was just about the same. I don't think they make first-class bread there, for the reason that they use cheap flour.

Cross 20. Is there not a taste about that bread, and a slight odor, different from that made by Orrin Kendall.

A. None other than would be produced by using spring and winter wheat.

Cross 21. What did you think of the process at that time; of the economy and value of it?

Ans. I thought the process was very simple and very good,
311 and a large saving over the old way.

Cross 22. Did you then think the quality was superior?

Ans. I did not think it was much better than the old kind made properly.

Cross 23. Have you since believed that process to be economical and useful?

Ans. I have never given it much thought recently. I always thought it was economical, but I never investigated it until within a few months.

Cross 24. Have you always retained your opinion formed at your examination with Weeks?

Ans. I have.

Cross 25. Have you not at some time since your interview with Weeks, said that said process was a failure, and believed it?

Ans. When Mr. Kendall first started it here, I thought, from what I saw and heard of the bread, he would be likely to make a failure of it.

Cross 26. How long did you remain of that opinion?

Ans. I could not give any time; it was being into Mr. Kendall's, and his speaking of the trouble with the machinery, &c.

312 Cross 27. Was it not discussed at several meetings at Baker's, held at Kendall's, with H. C. Childs, Thompson & Templeton, yourself and others?

Ans. It was spoken of once or twice in a joking way, Mr. Childs saying Mr. Kendall had better give up his cracker business; and, as he had got the right of making patent bread, take the bread business. I think I never heard of it but twice; once was when Mr. Kendall was getting in some machinery, and again when one of the men came in, and to see about the machinery breaking.

Cross 28. When were these (first) baker's meetings held at Mr. Kendall's office, and how long did they continue?

Ans. Three or four of us have met there, perhaps a half dozen times in a year; they have lasted, perhaps, an hour, and perhaps longer.

Cross 29. Did they not always meet monthly, or semi-monthly, for many months?

Ans. After the journeymen bakers had their strike, a year ago, we met together, about four or five of us, and authorized Mr. Thompson

(of Thompson & Templeton) to change the price (as often as he saw fit) of bread. We may have had, possibly, eight or ten meet-
313 ings during the year.

Cross 30. How frequently did you meet during last fall and winter?

Ans. I don't think we averaged last winter a meeting oftener than once in two months. The meeting was not attended generally by any one but Childs, Thompson & Kendall, and myself.

Cross 31. Were not the persons named in your last answer the principal American bakers?

Ans. They were, except Kane Brothers, whom I forgot to mention.

Cross 32. At what time did these meetings take place at which Mr. Kendall's aerated bread was talked of?

Ans. The first one was in July or August, when he was getting in his machinery, and another was a month or two afterwards, in the fall some time.

Cross 33. Please state all that was said by you and others at the first time.

Ans. I don't think there was anything in particular said at that time.

Cross 34. Did not Mr. Templeton, or Mr. Childs, or yourself, or one of you, say at this first meeting, in substance, say that you did not think Mr. Kendall would make it a success.

Ans. I don't think there was anything of the kind said at
314 that meeting.

Cross 35. Did you not think at that time that Mr. Kendall would not succeed?

Ans. I don't think I formed any opinion at that time; I had nothing to form it on.

Cross 36. May it not have been said at that meeting in your hearing by one of the gentlemen named?

Ans. I am confident that there was nothing of the kind said at that meeting.

Cross 37. Did not H. C. Childs say at that meeting that the patent right had been offered to him by John Pendleton, and that he had investigated it, and had concluded not to have anything to do with it.

Ans. I recollect Mr. Childs saying at one of the meetings that he had bought the right, and had investigated it, and concluded not to have anything to do with it.

Cross 38. What, then, did you say?

Ans. I don't recollect making; I did not know much about it at the time. I might have said that Mr. Kendall would have to make better bread if he made it a success.

Cross 39. Did not Mr. Kendall talk with you last fall and winter, and show you the bread on one or two occasions.

315 Ans. I recollect being in Mr. Kendall's when a batch of bread came out, and Mr. Kendall's showing it to me.

Cross 40. Did he not previously show you some bread that was not so good when you expressed an opinion not favorable to it.

Cross 41. Did you hear Mr. Pendleton's name mentioned at either of those baker's meetings?

Ans. I did not, to my recollection.

Cross 42. From whom did you understand that Kendall had procured the right to make the bread?

Ans. I never knew from any one from whom he procured the right to make the bread.

Cross 43. Did you not suppose he was making it under some contract?

Ans. I did. I supposed he was making it under some agreement with the man I had talked with over there.

Cross 44. Did you not, in a conversation with Mr. Kendall, in his office or store, early last winter, or late in the fall, predict that the aerated bread would prove a failure in his hands, and did he not say, in substance, something about his contract? and if so, what?

Ans. I don't think I ever expressed to Mr. Kendall that it would be a failure, tho' I did think if it was not more regular, it
316 would be, but I never did have any conversation, direct or implied, with Mr. Kendall about a contract for making aerated bread until the 20th of April, 1865.

Cross 45. Did you not, at the conversation I have just called your attention to, talk with Mr. Kendall about the failure of the aerated bread in other cities.

Ans. I don't think I did. I never knew of it in other cities.

Cross 46. When did you first hear of John Pendleton?

Ans. The first time I ever heard of him, or saw him, was the first of June, 1864, as I before stated.

Cross 47. May you not have heard of him at your visit at Milwaukee before that time?

Ans. I did not.

Cross 48. Was that the only interview you had with him that month?

Ans. It was.

Cross 49. Did he at that interview speak of any baker to whom he had offered the patent?

Ans. I don't think he did. Our conversation only lasted a few minutes, and I had no time to talk with him.

Cross 50. What, then, did he say about H. C. Childs on that occasion.

Ans. I don't think he mentioned his name, or any other man's in the city of Chicago at that time.

317 Cross 51. Who did he say referred him to you?

Ans. He did not say that any one did. He only came into the front shop, and my clerk came where I was, and said a gentleman wanted to see me. I came out, and he said he had a patent right for making aerated bread for sale. I had no time to talk with him, as I said before, and he went off.

Cross 52. When did you first hear that Kendall intended to make this bread?

Ans. I don't recollect; but I think I heard from Mr. Templeton

that Kendall was going to make the bread some time before Mr. Kendall had his machinery.

Cross 53. Where were you when Mr. Templeton told you?

Ans. I think it was at Templeton's bakery, though I can't say.

Cross 54. Did he volunteer the remark?

Ans. He did.

Cross 55. Did he say it would be a success, or otherwise?

Ans. No, sir; he did not.

Cross 56. Did he say anything of the right having been offered him?

Ans. I think he said he could have bought it, but he had no place to put it. He said they were making good bread in Milwaukee.

318 Cross 57. Did he say who offered it to him?

Ans. I don't recollect of his mentioning any name.

Cross 58. Did you understand from his conversation that it was John Pendleton?

Ans. I did not. I supposed it was the same man who had talked with me about it.

Cross 59. At the first baker's meeting, at which the aerated bread was mentioned, how did you know that the machinery was arriving?

Ans. We were in Mr. Kendall's office as the machinery was arriving, and he said that there was the machinery for aerated bread, or patent bread.

Cross 60. Did he say where it came from?

Ans. He did not.

Cross 61. Did he say he was intending to try to make the bread?

Ans. He said nothing about it.

Cross 62. Did you see the machinery when it arrived?

Ans. I saw what there was of it then.

Cross 63. Have you ever seen and examined Mr. Kendall's machinery since it was put into operation?

Ans. I have once; but not examined it much.

Cross 64. When?

319 Ans. Some time last fall.

Cross 65. Who showed it to you?

Ans. Cornelius Kendall.

Cross 66. How critical was the examination?

Ans. He invited me in to see it; said he had been to work all night on it; and that he had just got it ready to run, and the damned old machinery was not good for anything when they got it; that he was going to make an improvement on it, and that he never meant to pay a damned cent for the right to make the bread.

Cross 67. Was your examination sufficient to enable you to judge of the value and efficiency of the machinery?

Ans. It was not; the machinery was not at the time running, and I had not seen it before except at Milwaukee.

Cross 68. Was that all you saw or heard of this machinery before you bought the patent right?

Ans. The only time I ever saw it. Mr. Weeks told me in December last, that he had been to work for Mr. Kendall, and was then done.

I asked him how he got along making the bread. He said the machinery was poor, and that Cornelius Kendall thought he knew so much about it that he would not allow him to put it in shape.

320 Another gentleman, who has charge of the bread in Milwaukee, told me that he called in there when Mr. Kendall first started to make the bread; that he saw the machinery was not put up right, and that he attempted to show them how to put it up, and that all he got for his trouble was an insult from young Kendall.

Cross 69. What is the name of the gentleman from Milwaukee?

Ans. Joel Freeman.

Cross 70. Have you stated in the foregoing reply all that you had heard of the machinery before your purchase?

Ans. Yes. All that I recollect; the conversation I had with the gentleman from Milwaukee was since the purchase.

Cross 71. When did you have your conversation with Weeks?

Ans. It was some time in December, 1864.

Where did this conversation take place?

At my bakery near the post office.

Cross 72. Who was present?

Ans. No one but Mr. Weeks and myself.

Cross 73. Where was Mr. Dake?

I don't know; it was two mos. before he went to work for me.

Cross 74. Did Mr. Week say anything to you about the directions, under which he made the bread?

321 He did not at that time; he did at the time I saw him at Milwaukee.

Cross 74. What did he say about them, then?

Ans. He said it was made from gas; and if I would wait he would show me. He opened a barrel of flour; showed me the process of mixing it, drawed it off, and put it in the oven.

Cross 75. When Cornelius showed you the process, did he show you any directions for making the bread?

Ans. He did not show me any, or speak of any.

Cross 76. When he said he never meant to pay a damned cent for the right to make the bread, what reply did you make?

Ans. I told him I did not know anything about it; and I did not at that time.

Cross 77. Did you ever repeat that remark to any one?

Ans. I spoke of it to Mr. Nicholas, Mr. Goudy, and Mr. Dake; not to any one before I bought the right.

Cross 78. Did you never tell Mr. Dake that remark before you bought the right?

I never did; I never had a half hour's talk with him about the bread before my agreement with Pendleton.

322 Cross 79. Did you ever talk with Dake ten minutes before you contracted for it?

Ans. I probably have; just about that time.

Cross 80. When did Dake enter your employ?

Ans. About the middle of February.

Cross 81. Was your conversation before or after he entered your employ?

Ans. After.

Cross 82. How long after?

Ans. Perhaps it was two or three weeks after.

Cross 83. Where was your first conversation with him?

Ans. In the store; 156 Dearborn street.

Cross 84. Who was present beside Dake and you?

Ans. No one present, participating in it?

Cross 85. Who introduced the subject?

Ans. Mr. Dake said to me, the first time anything was said, I had better see Mr. Kendall about getting the bread; that people would call for it, and I ought to have it.

Cross 86. Was there any further conversation? and if so what?

Ans. I went to see Mr. Kendall to see about getting it, and he said he could not let me have it; and I afterwards told Mr. Dake that I had been to see Mr. Kendall and could not get it. That was all that was said about it at that time. In the course of two or three
323 weeks after that, there had been a good deal of call for the bread. Mr. Dake said to me one evening, there had been a good deal of call for it, and asked me if I thought Kendall had ever bought the right to make that bread. I told him I did not believe he had ever paid for it. He said he did not think he ever had either; that he knew him so well that he knew he would never pay for a thing until he was compelled to, and wanted to know if I knew who had the right. He said if I could find out who owned it, and if it was for sale, if I could buy it, he would furnish the money to the amount of ten thousand dollars, or as much as was necessary to go into the business. That was all the conversation I ever had with Mr. Dake on the subject of the aerated bread, until after the 17th day of April, when (1865) I bought the right, or agreed with Mr. Pendleton for it at Cincinnatti. At that time I did not know the name of the man who owned the patent.

324 Cross 87. How long was this conversation of the 27th of March?

Ans. I don't think it lasted five minutes; it was just on the closing of the store.

Cross 88. Was this the first conversation with Mr. Dake at which the patent was mentioned?

Ans. It was. I don't recollect having any other one.

Cross 89. Did he ask you at this conversation who owned the patent?

Ans. He did; I told him I did not know, but thought I could find out.

Cross 90. Did you mention to him your interview with Pendleton the June previous?

Ans. I think I did; but told him I did not know his name or where he lived.

Cross 91. How long after this talk did you go to Cincinnatti?

Ans. It was on the next night, the 28 day of March.

Cross 92. Did you have any further conversation with Dake before you left?

Ans. Nothing further; except when I left, Mr. Dake told me if I found it for sale I could draw for the money.

Cross 93. Was anything said in your conversation of the 27th of the probable cost of the patent, if you could purchase it?

I said something to Mr. Dake about what he ought to pay
325 for it, and told him I had heard that Kane Brothers had offered $6,000 for it. He said he would leave it discretionary with me to pay what I thought was right.

Cross 95. Who told you of the offer of Kane Brothers?

Ans. Mr. Templeton told me he heard so; and Mr. Kane told me himself he had offered that.

Cross 96. How long before your conversation with Dake did this occur?

Ans. At least six months before; about the time Mr. Kendall started the business of baking the bread.

Cross 97. Did they tell you so at one of these bakers' meetings?

Ans. Mr. Kane did not. I don't know where it was that Templeton told me; it may have been in my bakery, or his; he said he was satisfied if he could have it he could make a good thing of it.

Cross 99. Did you tell Mr. Dake that you were going to Cincinnatti?

Ans. I did; on the 28th of March, 1865.

Cross 100. Didn't you tell him on the 27th or 28 that Mr. Pendleton owned it?

Ans. I told him I didn't know who owned it, or where he lived; but I thought he lived in Cincinnatti.

326 Cross 101. Did you not tell him on the 27 or 28 that the man's name who owned it was John Pendleton?

Ans. I told him that I had stopped into Mr. Thompson's, of Thompson & Templeton's, and he said he thought his name was Pendleton, but he did not know where he lived.

Cross 102. Did you make that remark on the 27th or the 28th?

Ans. It was the morning of the 28th of March, after our conversation of the evening of the 27th.

Cross 103. From whom did you derive the information that induced you to go to Cincinnatti?

Ans. From John Pendleton, on the first of June, 1864, when he told me was about putting the thing in operation there.

Cross 104. Was that at the June interview to which you have referred?

Ans. It was; and that was the only one I had until the 17th day of April, 1865.

Cross 105. Did he, at that time, mention the person or firm for which he was putting up the bakery in Cincinnatti?

Ans. I think he did, though I cannot recollect.

Cross 106. When you reached Cincinnatti, to whom did you first apply to find out Pendleton?

327 I went to what is called the Aerated Bread Company. I enquired there if they could tell me who the man was from whom they bought the right for making that bread, and where he

lived. They told me his name was John Pendleton, and that he lived in the city of New York; they did not know what street or number, but that if I would go down to Geo. M. Lee's office, 53 Third street, he would tell me. This was on the 30th of March, 1865.

Cross 107. How did you find the Aerated Bread Company?

Ans. I went to A. P. Bonney's picture and frame manufactory, and found A. P. Lord, their bookkeeper, and who was formerly in my employ, and enquired for them if he knew who the parties were who made that bread, and he said it was A. B. Latta & Co.; and that their bakery was one block from them.

Cross 108. Did you find Mr. Lee that day?

Ans. I did not find him at his office. I went there and found a notice on the door, saying that he was moving, and that he would not be at his office for but one hour a day, until further notice. He told me he was moving out two miles from there; this was about two o'clock in the afternoon. I took the cars and went out to Mr.
328 Lee's house, and found him assisting in taking care of furniture. I asked him if he could tell me where John Pendleton lived; He said he lived at No. 4, West 22nd street, New York. I asked him if he knew Mr. Pendleton had the right for making aerated bread for Cook county for sale. He said he did not know, and wanted to know if I wanted to buy it. I told him I did. He said he thought Pendleton would be in Cincinnatti in 4 weeks. He said if it was for sale he would write me and let me know, when he saw Mr. Pendleton. I told him if he would do so I would be very much obliged to him, and the bade him good-bye, and took the cars for Chicago?

Cross 109. Did you not ask him if he knew what Kendall's rights were in the matter?

Ans. I did not; Mr. Kendall's name was not mentioned. He told me he did not know anything about Mr. Pendleton's affairs in Chicago.

Cross 110. Did you not tell him the bread was manufactured in Chicago?

Ans. I did not; nothing was said about the bread.

Cross 111. Did you ask any one in Chicago before you left where Mr. Pendleton lived?

329 I did not, for I did not know his name. I asked Mr. Thompson if he knew where the man lived who owned the right.

Cross 112. Do you know Henry Town?

I do.

Cross 113. How long have you known him?

A little over two weeks, and no longer.

Cross 114. How long have you known Yankee?

Ans. I think I have known him for about six years.

Cross 115. Was he at your bakery near the custom-house at any time last spring, before the 20th of April? If so, when?

Ans. I don't think I ever saw him in that bakery until after the 21st day of April, 1865.

Cross 116. When did he first learn that you had procured a contract from Pendleton for the purchase of the patent?

Ans. I think that on the 22nd day of April Yankee called into my store, and wanted to know if Mr. Kendall was such a damned fool as to loose the right for making aerated. This was after I had written Mr. Kendall the note; I think, on the 22d day of April, 1865. He said he never was so much surprised as when he learned that we had got the right for making that bread.

330 Cross 117. Did you show him the contract of the 17th of April at that time?

Ans. Mr. Dake told him we had got it and paid for it, and showed him the assignment or the contract. He said Kendall must be a damned old fool.

Cross 118. Did Yankee know that you proposed to get the patent at that time?

He did not, to my knowledge. He said he was never more surprised.

Cross 119. Please state all that was said by you or Yankee at this interview, or Mr. Dake.

Yankee did not stay there but a few minutes, and I don't recollect any conversation, other than I have stated, that took place at that time.

Cross 120. Did either you or Mr. Dake tell him that you had been to Cincinnati to get the patent?

Ans. I don't think either of us did; the papers showed that they were made out there.

Cross 121. Did not Yankee say that his business was the business of making aerated bread, and that if you or Dake had the patent he wanted to work for you?

A. He did not at that time.

Cross 122. Was anything said at that time about Yankee's entering your service, or that of Mr. Dake?

331 Ans. There was not at that time. He was there only a few minutes.

Cross 123. How long after that was anything said on that subject?

Ans. A few days after that Mr. Kendall came in there and wanted to make some arrangements to get Mr. Dake's interest. He said he wanted to see if he could get Mr. Dake's interest, and go in with me to let him make a portion of the bread, or he would make all of the bread, as he had the machinery, and let me have all I wanted at cost price. I told him that I would talk with Mr. Dake about it, and meet him at his office at 12 o'c. the next day, and talk it over with him. I went there at 12 o'c., and told him that I was satisfied that Mr. Dake would want altogether too much money for his interest; that there was no use of thinking of buying it; that we had concluded to put up a building and machinery, which would probably take us two or three months to do, and, as he had the machinery on hand, that we would let him go on and make the bread without any charge

332 for the use of the patent, providing he would sign an agreement to quit making when we were ready to start. He wanted

to know if I would give him a little time to think of it; that Cornelius was away, and he wanted time to think of it. I gave him 'til the next day, and then he said he could not agree to it, for he did not know but he had some right in the patent after all. I met Yaukee that afternoon, the same day. I told him we were going right on to put up a building, and going into baking just as soon as we could get ready. I saw him the same day talking with Mr. Dake, and heard him say that the aerated bread business was his business, and he intended following it.

Cross 124. When did you receive a letter from Mr. Pendleton, in which he referred to the quality of the bread made by Mr. Kendall?

Ans. I never received a letter from Mr. Pendleton in my life.

Cross 125. When did you first see the letter addressed to Mr. Dake, in regard to the quality of the aerated bread made in Chicago, written by Mr. Pendleton?

I never saw a letter from Mr. Pendleton to Mr. Dake in my life. I think he received one in regard to the right of baking in St. Louis sometime in May, 1865.

333 Cross 126. What statement did that letter contain about the quality of aerated bread made in Chicago, or by Yankee?

Ans. I never saw the letter, and I don't know what it said about Yankee or aerated bread.

Cross 127. What did Mr. Pendleton say to you when he was here, April 20th, about the quality of bread made by Mr. Kendall as compared with others?

Ans. He said the bread made by Mr. Kendall was good bread, but he thought the bread of Fuller, of Rochester and Buffalo, was the best he ever saw; and advised me to go there and see Mr. Fuller, see their machinery, and let him send, it he would, one of his men out here to help start this up, and thought it would well pay me for going, for he thought Mr. Fuller had the best running establishment he ever saw anywhere.

Cross 128. How long before your interview with Yankee, of the 22nd of April, had you seen and talked with him?

Ans. I have not spoken to him 6 times in two years, and never spoke to him about aerated bread 'til after the 21st of April, 1865. I never talked 15 minutes with him in all together.

334 Cross 129. If, in fact, Yankee saw your contract of the 17 of April before the 21st, how did he obtain access to the same?

Ans. I could not tell.

Cross 130. Did'nt you see Yankee before the 20th or the 21st?

Ans. I might have seen him, but not to speak to him.

Cross 131. Did'nt you or Dake send any message to him?

Ans. I did not. I don't know that Mr. Dake did.

Cross 132. From whom did you ascertain the condition of Kendall's machinery before or by the 20th of April, 1865?

Ans. Mr. Weeks and Cornelius Kendall.

Cross 133. Did you tell all that they said to you on the subject?

It was.

Re-examination by Mr. Goudy:

Int. 13. In your answer to the 43 cross-interrogatory, you say that you suppose Mr. Kendall was making aerated bread under some agreement with the man you had talked to about the first of
335 June, 1864. State why you supposed so.

Ans. I only had reason to suppose so because he was making the bread.

Int. 14. Did you have any other knowledge on that subject?

Ans. I never had any knowledge whatever until I had bought the right from M. Pendleton.

Int. 15. State the substance of the conversation had by you and Mr. Pendleton on the 17 of April, 1865, as it occurred.

Ans. On the 17th day of April, 1865, about nine o'cl'k in the morning, I stepped in the post-office of the city of Cincinnatti and enquired if there was any letter for me, and turned around and recognized Mr. Pendleton, who was standing at another delivery near by, and enquired if there was anything for John Pendleton. I then stepped up to him and told him I believed it was Mr. Pendleton. He said it was. I told him I guessed he did'nt recognise me. He said he did not. I told him I was Mr. Woodman from Chicago, and said I looked somewhat different from what I did when he saw me in Chicago with my sleeves rolled up, and that he was glad to
336 see me. I then told him I had been waiting a couple of days to see him. I then asked him if he had the right (for sale) of the aerated bread for the city of Chicago. He said he had, and had told Mr. Lee to inform me to that effect before he went to St. Louis. This occurred as we passed from the post-office to Mr. Lee's office. We went up into Mr. Lee's office. He said he had no breakfast and had just come in from St. Louis; that he would go and get some breakfast and meet me at 12 o'c., and if I wanted to buy the patent he would sell it to me. I told him I would meet him at 12 o'c., and to sell me for cash, and make his figures as low as he could. He said he would do so. I met him at 12 o'c. He said he thought he ought to have $6,000. I told him it was more than I wanted to pay for it. I told him that I thought he ought to sell it to me for about $4,000. He said that he thought $6,000 was cheap for it; that he had been to considerable expense fooling with Mr. Kendall; had come clear out here to Chicago on expense and could get nothing out of him; and that he thought he ought to realize for a city like Chicago
337 $6,000 without any expense. I told him that I had made up my mind to give him $5,000 if he would not sell it for less, and that I would pay him the cash any time between then and the first day of May. He said that he liked a cash customer and that Mr. Kendall owed him a note of $500, which he was in hopes to collect, but thought it doubtful, as it was considerably over due and had been presented several times and could not get the pay, but that he would try to collect it and let me have the patent for $5,500. I finally told him I had made up my mind to give him $5,000, and that was all I wanted to pay for it. He said he did not think of selling it so low, but if I would pay Mr. Lee for drawing up the papers he

would take the $5,000. He then said he had lost $1,000 by fooling with Kendall for it, for he had been offered $6,000 for it when he was here.

Cross-examination resumed by Mr. Woodbridge:

Cross 134. Had you seen Mr. Lee before your first interview with Mr. Pendleton, after your arrival on your second visit at Cincinnati?

Ans. I saw him the day before.

Cross 136. More than once?

338 Ans. I think I was in his office twice before Mr. Pendleton came.

Cross 137. Had you conversed with him about the patent?

Ans. I had; he showed me the patent and told me Mr. Pendleton was anxious to sell it. I first told Mr. Lee I would appoint a day to meet him in Chicago, as he was gone to St. Louis. Mr. Lee said the old gentleman would come, but if I could stay I had better. I told him I would wait over and see him there, and that was all that took place between us.

Cross. 138. Did you not talk with him about the bread made here?

Ans. I don't think I said a word about it until I had bought the patent.

Cross 139. Did not he tell you that Pendleton had consulted him as to whether he could give a good title?

Ans. He did not say anything about it. He said that Mr. Pendleton was ready and wanted to sell.

Cross 140. When did he say that?

Ans. He said that the day I reached Cincinnati.

Cross 141. Does Mr. Lee know Mr. Kendall?

Ans. I don't know that he does; he did not tell me that he did.

Cross 142. From whom did Mr. Lee get the information that

339 Mr. Kendall was insolvent?

Ans. He never said anything to me about Mr. Kendall being solvent or insolvent.

Cross 144. From whom did Mr. Lee the information that Mr. Kendall was slow pay?

Ans. He got all that I know of from Mr. Pendleton. He said he did not pay his note.

Cross 144. How long an interval was there between your first and second visit to Cincinnati?

Ans. About 15 days.

Cross 145. What did you tell Pendleton on the 17th of April, 1865, about Kendall's circumstances and promptness in paying his debts?

Ans. In the afternoon, after the writings were drawn up and signed, we were into Mr. French's office, a gentleman, that Mr. Pendleton was stopping with, and Mr. French said he would not trust Kendall with a barrel of flour as far as he could see him. He said he came up here from Indiana a number of years ago; that he sold Mr. Kendall some flour; that he thought he never would get his pay of him,

and that he had never had a man lie to him as much as Kendall did in a business transaction in his life. I am not sure that he said he had to sue it. I then said that Mr. Kendall had the reputation of being slow pay; that several of our flour dealers had told me
340 they never would sell him another barrel of flour, and that they had tallied his check a week at a time. I told him I could not understand it; that he had a good business; was a good man. That was all that was said on that subject.

Cross 146. Did you see the contract between Pendleton and Kendall while you were there.

Ans. I did not see it; but he told me he had one, and would fetch it up when he came up.

Cross 147. Did Pendleton tell you at which of his visits in Chicago he was offered $6,000 for his patent?

He said it was in June.

Cross 148. When you returned to Chicago, did you tell Dake that Pendleton would bring the Kendall contracts with him when he came?

Ans. I don't think I told him that he said he would bring them, as I did not think them of any consequence. I told Mr. Dake that he had had a contract that had, and that he would bring it up when, he came. I might have told him so.

C. L. WOODMAN.

Subscribed and sworn to before me this 30th day of June, 1865.

H. W. BISHOP, JR.,
Master, &c.

341 All of which is respectfully submitted.

H. W. BISHOP, JR.,
Master in Chancery of Circuit Court of the United States, Nor. Dist. of Illinois.

Master's fees $74 80; p'd by court.

342 "*Exhibit* 1."

H. W. BISHOP, Jr.:

Whereas, James Perry, Daniel Fitzgerald, and Horatio Bogart obtained a patent from the government of the United States, dated March 9th, A. D. 1858, for an improvement in raising dough, the title to which patent, in and for the county of Cook, in the State of Illinois, has become vested by transfer and assignment of the city of Chicago, in the county of Cook and State of Illinois; and whereas Joseph M. Dake, of said city of Chicago, desires to buy said patent and the right thereto in said county of Cook, in the State of Illinois. Now, in consideration of five thousand dollars ($5,000) in hand paid by said Joseph M. Dake to Charles L. Woodman, I, the said Charles L. Woodman, do hereby sell and assign to said Joseph M. Dake, the said patent and all the right, title, and interest of the patentees so assigned to me, in and for the said county of Cook, and the State of Illinois, to be, by the said Joseph M. Dake, his heirs and assigns, held and enjoyed to the full end of the term of said patent as freely as I might

have held and enjoyed the same, had this sale and agreement not been made.

343 Witness my hand and seal this 21st day of April, A. D. 1865.

[SEAL.] C. L. WOODMAN.

Witness:
JOHN E. WOODMAN.

U. S. PATENT OFFICE.

Received and recorded May 2d, 1865, in Liber. T and page 433 of transfers of patents.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.] D. P. HOLLOWAY,
Com'r of Patents.

"*Exhibit Two.*"

H. W. BISHOP, Jr., *Master.*

CIN'I, *April 12th*, '65.

C. L. WOODMAN:

DR. SIR: Mr. John Pendleton is now here, and will remain several days. He is at liberty to sell Chicago, and you can either come here and see Mr. Pendleton, or he will arrange when and where to meet you if you choose to address him or me. Mail to my care.

Respc't.,
G. M. LEE.

In the Circuit Court of the United States, Northern District of Illinois.

344 3—*Depositions of C. B. Ayer, C. L. Woodman, and J. V. Z. Blaney, before Bishop. Taken March* 12, 1866, *as follows, to wit:*

JOSEPH M. DAKE
vs.
ORRIN KENDALL. } In chancery.

345

Pursuant to an order made in the above-entitled causes, in the said court, on the day of , A. D. 186 , wherein and whereby it was among other things referred to the undersigned, a master in chancery of said court, to take testimony in said cause:

I, Henry W. Bishop, jr., master as aforesaid, do hereby report that on the 12th day of March, A. D. 1866, I was attended by W. C. Goudy, esq., solicitor for complainant, who produced before me, C. B. Ayer, C. L. Woodman, and J. V. Z. Blany, witnesses on part of complainant, and by J. Woodbridge, jr., esq., solicitor for defendant, and the said C. B. Ayer, having (by consent) been sworn, by J.

H. Thompson, a notary public, to make true answers to such questions as should be put to them under the direction of the master; and the said C. L. Woodman and James V. Z. Blany, having been first duly sworn, as aforesaid, by the said master upon examination, made answer, as follows:

346 *Dep. of C. L. Woodman.*

Examination of C. L. Woodman:

C. L. Woodman, called on behalf of complainant, being duly sworn, by consent, by J. H. Thompson, esq'r., notary public, was examined in chief by Mr. Goudy, and testified as follows:

1 int. Are you the same Chas. L. Woodman whose testimony has been previously taken in this case?

A. I am.

2nd int. Have you recently made an experiment in making aerated bread without exhausting the atmospheric air from the mixer? and if so, state what it was.

A. About the first of January, I instructed C. B. Ayer, in my employ, to make a batch of bread without exhausting the atmospheric air. He done so. I told him to make the bread every way just the same as he had been making the bread through the day, with that exception. I stood by and saw the bread made, and saw it after it was baked. I found that that bread was bad in color, and that it had a bad smell, so much so, that we didn't sell the bread to our customers, but sold it to a man named Brinkworth, who fed it
347 to his horses. We didn't send any of the bread out to our customers at all. The bread had a smell like old decayed vegetables or rotten potatoes; had a very bad odor to it. Mr. Ayer told me, previous to making it, that the bread would not be good if we didn't exhaust the air, and that we should lose the flour; but I told him to go on and make it, to satisfy me, and he done so.

3d int. Was the ordinary process for making the bread followed in every other respect, except in exhausting the air?

A. In every other respect except in exhausting the air. I had a batch made myself the same as other bread has been made, with that exception.

4th int. How long have you been a baker?

A. Twenty years. I have followed it for twenty years, with the exception of three years. I began when I was twelve years old, and am thirty-six now.

5th int. Describe the process by which bread is made according to the ordinary method.

A. In the first place we make a yeast from hops, barley, and flour, which we call "stock yeast." We then boil potatoes according to the quantity of bread we want to make, averaging about a
348 bushel of potatoes to ten barrels of flour. We add to these potatoes, when mashed up with a little flour, a quantity of water, (six or eight pail fulls,) and put in about two quarts of stock

yeast. Then let this set about six hours, which we call "foment" raising, when it works itself clear to a certain extent. We then take two pails full of this foment to about three pail fulls of water, and set it in what we call a sponge, mixing flour, foment and water together, and let that sponge lay for about three hours. It raises the full strength of the flour, and as soon as it commences falling we add more flour, and let it lay for an hour or two hours, working the dough over again, and throw it out on our fenches, and cut it off in the required size we want for a loaf of bread, molding it up by hand, put it away in boxes, remold it again, and put it into pans, and from there into the oven and bake it. The whole time from the time we commence to make the yeast is about eighteen hours until we get it baked, and about twelve hours from the setting of the sponge until the bread begins to bake. That is about as soon
349 as you can make it, and make good bread.

6 int. Is there any difference in the sweetness of bread made in the ordinary way and aerated bread?

A. There is.

7th int. Which is the sweetest?

A. Aerated bread is the sweetest.

8th int. Is there any difference in the quantity of bread that can be produced from a barrel of flour between the two methods?

A. There is a difference.

9th int. Which method produces the greatest quantity of bread?

A. The aerated.

10th int. How much to a barrel?

A. Twenty-five to thirty pounds of bread more than the old method.

11th int. How do you account for there being a greater production in making of aerated bread over the ordinary process?

A. The loss in the ordinary process is the slacking up; the fermentation, for instance. We set the sponge very stiff, as stiff as we can stir it, and let it lay and go through fermentation for three or four hours. It then becomes very slack, and requires another
350 amount of flour to stiffen it up. Now, in the process of aerated bread making we only mix it, and it goes through no fermentation, but is drawn off without any fermentation at all, and the sweetness of all the sugar in the flour and connected with the wheat is retained; it does not escape in fermentation. In fermentation we lose.

12th int. In making bread in the ordinary method, what is the effect of kneading over or handling again the dough after it once raises?

A. It helps it, if you don't handle it too much. It requires to be handled to a certain extent to make good bread in the ordinary way.

13th int. If you re-knead it, what effect does it have?

A. I understand you, in the ordinary way of making bread?

14th int. Yes.

A. As I stated before, we have to re-knead it, re-knead it and

mold it up. We go upon our judgment, according to the flour we are using, because some needs more kneading and some less, some more than others, (in the old way;) and if we knead it too much, it is spoiled. Some flour will be spoiled by kneading too much,
351 and some by not kneading enough.

15th int. Does it lose any of its lightness from being kneaded over—handled again?

A. I answer as before; it would if you kneaded it too much. We have to knead it to a certain extent to get it light.

16th int. State, in your opinion, what the effect of the admission of atmospheric air is in the kneader.

A. I am satisfied from my own observation since we have made aerated bread, that the effect is bad, and that good bread cannot be made without exhausting the atmospheric air, and that the failure in many places in making aerated bread has been from not exhausting the atmospheric air thoroughly from the kneaders, and in no case have I known a failure in making good aerated bread where they have done it in this country, and I have looked into the matter a good deal within the last six months.

17th int. Do you know of any case where good aerated bread has been made when atmospheric air was left in the mixer?

A. I do not.

18 int. What is the present capacity of the establishment
352 of Dake & Woodman for making aerated bread?

A. We have capacity for making a hundred barrels of flour into aerated bread every twenty-four hours, should we find a sale for it.

19th int. And how long have you had the ability to make that much per day?

A. We have had that for about three months.

20th int. During that three months how much have you, in fact, made per day?

A. From twenty to twenty-five barrels.

21st int. During the time preceding that, what was the capacity of your establishment?

A. From forty to fifty barrels of flour per day.

22d int. How much was produced actually in the establishment during that time?

A. The average would be from twenty-five to thirty barrels during the summer time; about twenty-five barrels a day.

Cross-examination by Mr. Woodbridge.

23d int. Are you not the Chas. M. Woodman who is a partner of Mr. Dake's?

A. I am.

24th int. Is not C. B. Ayer still in the employment of Dake & Woodman?

353 A. He is.

25 int. How does the aerated dough compare, in consistency, with the dough made in the ordinary way?

A. It is not usually quite as stiff when prepared for baking, as the dough made in the ordinary way, although some dough that we use in the ordinary way is about the same—such as what we call "pan" dough, that we mix very slack—that is about the same.

25 int. Is it not in a sufficiently fluid state to fill a pan, even by running in at one end?

A. It is not; only from lying in a pan a sufficient time to settle from its own "heft," as any dough would that is mixed in the old way.

26. int. Is it generally stiff enough to cut off with a knife, when just discharged from the kneader?

A. You could easily cut it with a knife as you discharge it from the kneader in large masses. Cutting it with a knife would require it to be separated very soon, or from its slackness, it would unite together again; but in the stream or quantity that we draw off from, we
354 could cut it with a knife.

27 int. Suppose it to be discharged upon a level place, could you then cut it with a knife?

A. Yes sir, you could cut it; there is no stiffness.

28 int. Would it remain separated for a moment?

A. It would not for any length of time. It is of that character that it would run together again.

29 int. Is not carbonic acid gas sufficiently heavy to be poured from one open vessel into another without escaping?

A. I don't know whether it is or not.

30 int. If poured into a vessel containing atmospheric air, would it not displace the atmospheric air and sink to the bottom?

A. I could not state from my own knowledge. My opinion is that it would, but I could not tell.

31 int. If there was a vent in the top of a vessel, and sufficient carbonic acid gas was poured into the vessel, would not the atmospheric air be principally expelled?

A. I think a portion of it would. I do not think you could expell all the air, without wasting a large amount of gas.

32 int. When you say, that in your expriment of the first
355 of January you proceeded in the same manner as usual, except in the matter of exhausting the atmospheric air, you mean to say that there was the same gaseous pressure as you usually had?

A. We had the same pressure of gas when we drew off; the only difference was, that when we got thro' drawing we pumped back the amount of pressure of gas we have into a reservoir, before opening the kneader. Then, opening the kneader, the atmospheric air, of course, fills the kneader, and there is no gas in the kneader: that is done every time. We mix the flour and water together, close the kneader air tight, set the pump to work and pump out—exhaust the air by the pump. In this case we did not exhaust the air; that was the only difference. We didn't set the pump to work to exhaust the air but left it in, but pumped up the same amount of pressure we always do in every batch. We did the same, except taking the air out of the kneader, which is in it at every time we mix the bread.

H. Thompson, a notary public, to make true answers to such questions as should be put to them under the direction of the master; and the said C. L. Woodman and James V. Z. Blany, having been first duly sworn, as aforesaid, by the said master upon examination, made answer, as follows:

346 *Dep. of C. L. Woodman.*

Examination of C. L. Woodman:

C. L. Woodman, called on behalf of complainant, being duly sworn, by consent, by J. H. Thompson, esq'r., notary public, was examined in chief by Mr. Goudy, and testified as follows:

1 int. Are you the same Chas. L. Woodman whose testimony has been previously taken in this case?

A. I am.

2nd int. Have you recently made an experiment in making aerated bread without exhausting the atmospheric air from the mixer? and if so, state what it was.

A. About the first of January, I instructed C. B. Ayer, in my employ, to make a batch of bread without exhausting the atmospheric air. He done so. I told him to make the bread every way just the same as he had been making the bread through the day, with that exception. I stood by and saw the bread made, and saw it after it was baked. I found that that bread was bad in color, and that it had a bad smell, so much so, that we didn't sell the bread to our customers, but sold it to a man named Brinkworth, who fed it
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3d int. Was the ordinary process for making the bread followed in every other respect, except in exhausting the air?

A. In every other respect except in exhausting the air. I had a batch made myself the same as other bread has been made, with that exception.

4th int. How long have you been a baker?

A. Twenty years. I have followed it for twenty years, with the exception of three years. I began when I was twelve years old, and am thirty-six now.

5th int. Describe the process by which bread is made according to the ordinary method.

A. In the first place we make a yeast from hops, barley, and flour, which we call "stock yeast." We then boil potatoes according to the quantity of bread we want to make, averaging about a
348 bushel of potatoes to ten barrels of flour. We add to these potatoes, when mashed up with a little flour, a quantity of water, (six or eight pail fulls,) and put in about two quarts of stock

yeast. Then let this set about six hours, which we call "foment" raising, when it works itself clear to a certain extent. We then take two pails full of this foment to about three pail fulls of water, and set it in what we call a sponge, mixing flour, foment and water together, and let that sponge lay for about three hours. It raises the full strength of the flour, and as soon as it commences falling we add more flour, and let it lay for an hour or two hours, working the dough over again, and throw it out on our fenches, and cut it off in the required size we want for a loaf of bread, molding it up by hand, put it away in boxes, remold it again, and put it into pans, and from there into the oven and bake it. The whole time from the time we commence to make the yeast is about eighteen hours until we get it baked, and about twelve hours from the setting of the sponge until the bread begins to bake. That is about as soon
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A. I am satisfied from my own observation since we have made aerated bread, that the effect is bad, and that good bread cannot be made without exhausting the atmospheric air, and that the failure in many places in making aerated bread has been from not exhausting the atmospheric air thoroughly from the kneaders, and in no case have I known a failure in making good aerated bread where they have done it in this country, and I have looked into the matter a good deal within the last six months.

17th int. Do you know of any case where good aerated bread has been made when atmospheric air was left in the mixer?

A. I do not.

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352 of Dake & Woodman for making aerated bread?

A. We have capacity for making a hundred barrels of flour into aerated bread every twenty-four hours, should we find a sale for it.

19th int. And how long have you had the ability to make that much per day?

A. We have had that for about three months.

20th int. During that three months how much have you, in fact, made per day?

A. From twenty to twenty-five barrels.

21st int. During the time preceding that, what was the capacity of your establishment?

A. From forty to fifty barrels of flour per day.

22d int. How much was produced actually in the establishment during that time?

A. The average would be from twenty-five to thirty barrels during the summer time; about twenty-five barrels a day.

Cross-examination by Mr. Woodbridge.

23d int. Are you not the Chas. M. Woodman who is a partner of Mr. Dake's?

A. I am.

24th int. Is not C. B. Ayer still in the employment of Dake & Woodman?

353 A. He is.

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A. It is not usually quite as stiff when prepared for baking, as the dough made in the ordinary way, although some dough that we use in the ordinary way is about the same—such as what we call "pan" dough, that we mix very slack—that is about the same.

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A. It is not; only from lying in a pan a sufficient time to settle from its own "heft," as any dough would that is mixed in the old way.

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A. You could easily cut it with a knife as you discharge it from the kneader in large masses. Cutting it with a knife would require it to be separated very soon, or from its slackness, it would unite together again; but in the stream or quantity that we draw off from, we
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27 int. Suppose it to be discharged upon a level place, could you then cut it with a knife?

A. Yes sir, you could cut it; there is no stiffness.

28 int. Would it remain separated for a moment?

A. It would not for any length of time. It is of that character that it would run together again.

29 int. Is not carbonic acid gas sufficiently heavy to be poured from one open vessel into another without escaping?

A. I don't know whether it is or not.

30 int. If poured into a vessel containing atmospheric air, would it not displace the atmospheric air and sink to the bottom?

A. I could not state from my own knowledge. My opinion is that it would, but I could not tell.

31 int. If there was a vent in the top of a vessel, and sufficient carbonic acid gas was poured into the vessel, would not the atmospheric air be principally expelled?

A. I think a portion of it would. I do not think you could expell all the air, without wasting a large amount of gas.

32 int. When you say, that in your expriment of the first
355 of January you proceeded in the same manner as usual, except in the matter of exhausting the atmospheric air, you mean to say that there was the same gaseous pressure as you usually had?

A. We had the same pressure of gas when we drew off; the only difference was, that when we got thro' drawing we pumped back the amount of pressure of gas we have into a reservoir, before opening the kneader. Then, opening the kneader, the atmospheric air, of course, fills the kneader, and there is no gas in the kneader: that is done every time. We mix the flour and water together, close the kneader air tight, set the pump to work and pump out—exhaust the air by the pump. In this case we did not exhaust the air; that was the only difference. We didn't set the pump to work to exhaust the air but left it in, but pumped up the same amount of pressure we always do in every batch. We did the same, except taking the air out of the kneader, which is in it at every time we mix the bread.

33 int. How do you determine the amount of gaseous pressure?

A. By a guage, the same as a steam guage.

356 34 int. If the mixer contains atmospheric air, would it not take a less amount of gas to produce the same amount of pressure?

A. We never have any pressure of atmospheric air in the kneader.

35 int. I say, if the mixer contained atmospheric air, would it not take a less amount of gas to produce the same amount of pressure than in ordinary cases, when the kneader contained no air?

A. I don't think it would. Our pressure varies from a hundred to a hundred and forty and fifty pounds, when drawing off.

Re-direct examination by Mr. Goudy:

36 int. If there was a given amount of atmospheric air in the kneader not removed, is it not true that you could not introduce as much gas?

A. Of course, if the kneader was full of atmospheric air, we could not introduce as much gas as though there was not anything in the kneader.

37 int. At what rate of speed do you run the kneader—how many revolutions per minute?

A. We run from seventy to a hundred revolutions per minute.

357 Our speed varies with regard to whether all our machinery is at work or not. Sometimes, when all the machinery is at work, and cracker machines, and everything running, the engine don't run, or work, as fast as when we are simply running the bread machinery.

38 int. Does the speed have anything to do with the character of the bread that is produced?

A. Not any. If you, when mixing, mix on a slow speed, you want to mix a little longer than when the mixer is running fast.

C. L. WOODMAN.

Subscribed before me, March 12, 1866.

H. W. BISHOP, JR.,
Master, &c.

Dep. of J. V. Z. Blaney.

Examination of James V. Z. Blaney:

James V. Z. Blaney, called on behalf of the complainant, being duly sworn, was examined in chief by Mr. Goudy, and testified as follows:

1 int. State your residence and occupation?

A. My residence is now in Chicago. I am a consulting chemist and physician.

2 int. How long have you followed that profession?

A. I have been a consulting chemist, say for twenty-two

358 years; but I have practiced as chemist and physician for a longer time.

3 int. State, if you please, of what element—what are the different elements, in wheat flour?

A. The ultimate elements are the various simple substances of which it is composed. The proximate elements are starch, gluten, and sugar, and salts of several kinds. The gluten is, itself, a compound of several other constituents, and contains salts, mostly of phoshphate of lime, potash, and soda. Those are the proximate elements. Mechanically, it is divided into pure bolted flour, and the husks or bran. We make three several statements with regard to the composition of flour: First, it is mechanically divided into pure flour, thoroughly bolted, and the husk or bran. Then, into its proximate elements, and then into its ultimate chemical elements, which last are carbon, hydrogen, oxygen, nitrogen, sulphur, phosphorus, lime, soda, and potash.

4 int. State the process which flour undergoes in being prepared ready for baking into bread.

A. By what processes?

5 int. The ordinary method?

A. There are two methods in use, the one by what is called
359 the "yeast," and the other by what is called the "salt rising." The first effect of yeast or salt rising, supposing them both to be in good condition for the purpose, is to effect the conversion of a portion of the sugar, and probably, also, a small proportion of the starch, into carbonic acid gas and alcohol. The carbonic acid gas so generated produces the effect that is called the "rising" of the bread, by making a porous mass, in consequence of the quality of the gluten, which prevents the escape of the gas. By this process a portion of the sugar is lost by its conversion into carbonic acid gas and alcohol. That is the process of rising.

4 int. What effect does the loss of the sugar produced by the fermentation have upon the character of the bread?

A. It diminishes its nutritive qualities to the amount of the sugar that is so lost.

5 int. Does it have any effect upon the quantity of bread produced by a given quantity of flour?

A. The quantity of bread produced is diminished by the weight of the amount of sugar lost.

6 int. Have you examined the method of making bread
360 under the patent issued to Perry & Fitzgerald, as practised by Dake & Woodman?

A. I have.

7 int. State whether or not you have any experience in examining patents.

A. I have been frequently consulted with reference to making applications and of claiming claims, but have never made it a matter of special business.

7 int. Do you consider the method for making aerated bread described in the specifications of Perry & Fitzgerald of practical value, and an improvement over the ordinary method.

A. I do; for two reasons. First, that there is no loss of material which occurs in the usual fermentation process. Second, because there is no ferment in the substance of the bread which would predispose it in a moist atmosphere to undergo further chemical change.

8 int. What is the effect of using carbonic acid gas, manufactured from pure materials, upon the dough when used for fomenting bread?

A. It is simply to effect the process usually called "rising" by the formation of minute cavities during the attempt of the carbonic acid gas to escape during the process of baking.

361 9 int. In the ordinary method of baking bread, how are these cavities properly distributed through the dough?

A. Usually by the process; first, of admixture of the ferment in the dough in the first stage; and secondly, by the process of subsequent kneading, by which the gas is forced, mechanically, into those parts of the bread into which the gas had not sufficiently penetrated.

10 int. How is the same result attained from the method under said patent?

A. First, because from the greater fluidity of the dough, the gas is better able to penetrate all parts of the dough, which obviates the necessity of a second kneading; secondly, on account of the high pressure under which the gas is introduced, which gives greater expansive force to a given volume of gas previous to its being heated in the oven.

11 int. You will observe that the specifications to said patent direct, that after the flour, salt, and water is introduced into the mixer, that it is to be exhausted of atmospheric air; state, whether or not, in your opinion, the exhaustion of the air is necessary for the purpose of making good bread.

362 A. This question I answer with a proviso. It is my opinion that the previous exhaustion of air materially facilitates the fermentation of the carbonic acid gas through the substance of the dough, and hence, in the absence of practical experience, I would consider that this process would be much more uniformly to produce light bread than a process otherwise the same, in which previous exhaustion of the atmospheric air had not been effected.

12 int. What, in your opinion, would be the effect of leaving the ordinary atmospheric air in the mixer and having it intermixed with the gas and through the dough?

A. Presuming the vessel to be air-tight?

13 int. Yes.

A. My impression would be that the presence of the air would retard, and to a certain extent prevent, the rapid and complete admixture of the carbonic acid gas through the substance of the dough.

14 int. Suppose the atmospheric air was impure from any causes whatever, what would be the effect upon the dough and the bread baked therefrom?

363 A. Any impunity in the air contained in the mixer, if consisting of gases absorbable by water, (such as are liable to be produced from the decomposition of animal and vegetabe matter,) would be retained in part with the dough, but partially removed in

the process of baking solid or liquid substances suspended in impure air, but less volatile would probably be retained in great part in the bread after baking.

15 int. Would not the bread baked from dough, raised by the use of carbonic acid gas in an air-tight vessel, be superior in quality to that which would be baked with gas intermixed with ordinary air?

A. That would depend in part, so far as the flavor of the bread was concerned, upon the freedom of the air from noxious ingredients; and as regards lightness, upon the degree of pressure of the gas and the length of time the dough was submitted to that pressure, and the thinness of the dough. All those circumstances would come in there.

16 int. Do you think the atmospheric air, as it is usually found in large cities, is sufficiently pure to be introduced with safety
364 into bread intended to be used for food?

A. So far as the general health is concerned my impression is, that the process of baking being at a temperature above two hundred and twelve degrees, at which temperature organic ferments have their efficacy (for the most part if not wholly) destroyed; that no material injury could arise to the health, though the bread might have an unpleasant and repulsive flavor.

17 int. Have you examined the patent issued to Robinson & Lee, and another issued to John Danglish, both of them English patents, for improvements in raising dough to be baked into bread?

A. Those are the two that you gave me a transcript of?

18 int. Yes.

A. I have; I cannot identify them, each one by itself?

19 int. State whether or not, in your opinion, there are any advantages in the patent of Perry & Fitzgerald over said English patent; and if so, what?

A. My opinion is that there are advantages. The first is in the exhaustion of the atmospheric air which facilitates the fermen-
365 tation of the carbonic acid gas through the substance of the dough, consequent upon which the process of rising is more perfectly and more rapidly effected. Secondly, I consider the use of carbonic acid gas, after exhaustion of the atmospheric air, in like manner more effective than the use of water saturated with the gas, the pressures being equal. Thirdly, in the mode of the discharge of the dough and its immediate introduction into the oven, the bread is more apt to be light after baking than by the slower process of the English patents. As far as I can recollect, that covers the several grounds, though I may have omitted something.

Cross-examination by Mr. Woodbridge:

20th Int. Have you ever seen bread made by the Perry and Fitzgerald patent?

A. I have.

21st int. Will you please describe the manner in which they make bread?

A. The flour and the water and the proportion of salt is
366 introduced into a mixer in which there are revolving arms,

which effect a complete mixture of these ingredients. The atmospheric air is then exhausted—pumped out, until the pumps refuse to work. The carbonic acid gas, previously prepared of a mixture of marble dust and diluted sulphuric acid, passed through a washer, in order to remove any spray of sulphuric acid or of the salts of lime, is passed into an instrument called a gas-holder over water. From this gas-holder the carbonic acid gas was forced by a pump into an air-tight cylinder under pressure, and from this cylinder was drawn by a pump and forced into the mixer, the arms during which time revolving the gas during its passage from the pump to the mixer, having been cooled by passing thro' a coil of pipe immersed in cold water, so that it arrives at the mixer at a temperature scarcely above that of atmospheric air. I cannot call to mind at this moment the degree of pressure used; I think it was a hundred and thirty odd pounds—a hundred and thirty pounds. The pressure, by
the action of the pump on the gas within the mixer, was from
367 a hundred and twenty to a hundred and thirty-five pounds per
square inch, and in about from seven to ten minutes a portion of dough was withdrawn from the vessel from the lowest curve of the vessel into pans; but not being found sufficiently distended with the gas, successive portions were withdrawn at short intervals, until the experience of the workman informed him that the dough had sufficiently risen. It was then as rapidly as possible transferred to the oven and baked. That is the process as I suspected it, so far as I was enable to observe in the course of a single afternoon.

22d int. In what condition was the dough as to consistency, when it was discharged from the kneader?

A. It is difficult to express. It appeared to be of somewhat less thickness than the dough usually prepared for baking in the ordinary domestic process, when yeast is used.

23d int. Was it, in other respects, similar in appearance to ordinary dough?

A. I could not perceive any material difference, except per-
368 haps that it was rather whiter in color.

24th int. What was the object of cooling the gas before its introduction into the mixer?

A. Because, at a high temperature, the gas would be much less rapidly absorbed by the water, which had previously been mixed with dough.

25th int. Are there not several methods in use for the manufacture and production of carbonic acid gas?

A. In difference of ingredients?

26th int. Yes, and the mode of producing it?

A. Any carbonate of an alkali or of an alkaline earth, mixed with diluted acid mineral or organic, which has a stronger affinity for an alkali or alkaline earth, (which is the base of the materials used,)will generate carbonic acid gas.

27th int. Does the value of carbonic acid gas, as an agent in raising dough, depend at all upon the method pursued in generating it, and the materials from which it is generated?

A. Only in so far as the gas is or is not perfectly freed by the process from all impurities, which might arise or be carried
369 over, mechanically, from the generating material or the vessel employed in the process; sometimes acids will act upon the material of the vessels employed, as nitric acid for instance, and generate noxious gas, which would be more liable to act upon the substance of the dough, and produce changes not desirable.

28th int. Do you remember the degree of speed at which the arms of the kneader revolved during the kneading of the dough, when you were present?

A. I had no way of ascertaining that fact.

29th int. If you undertook to raise dough in a close vessel under gaseous pressure, would you not (without ony specific directions to that effect) first exhaust the atmospheric air?

A. Unless I understood.

30th int. I am speaking of you as being a scientific man, as you are?

A. I was going to make a qualification, and say that, in the hands of ordinary mechanics, I don't think the idea would suggest itself; to a scientific man it would; one of the patents required absolutely the condensation of the atmospheric air; one of the two Eng-
370 lish patents which is precisely the reverse of this process. That process I consider as retarding materially the raising of the dough, by preventing the absorption of the carbonic acid gas by the water in the dough.

31st int. Suppose no directions were given you on the subject, and you were directed to raise the dough in a close vessel under gaseous pressure, would you not, as a scientific man, first exhaust the atmospheric air?

A. Unless I was familiar with the fact that the pressure of one gas would retard the absorption of another, the necessity would not present itself to me. But as the study of pneumatics and pnuematic chemistry is confined to but few scientific men, the question is not sufficiently explict to enable me to give a positive answer. If he was an expert in pneumatic chemistry it would probably suggest itself; to anybody else, it would not.

32d int. Supposing the atmospheric air be pure, to be ordinarily pure, would not the difficulty arising from its presence in the
371 kneader be overcome by raising the pressure of the gas?

A. It would, to a degree. It would, if the pressure were varied proportionately; but inversely to the absorpability of the respective gases present by water.

33 int. Is the use of carbonic acid gas as an agent, in your opinion, essential to the successful operation of this method of raising dough?

A. I know of no other gas which could economically be substituted for carbonic acid gas.

34 int. Do you know of any other gas that would effect the object, and at the same time could be safely used?

A. I do not, without injury either to the materials of the dough, or of the health of the consumer, or the flavor of the bread.

35 int. Have you examined particularly the specifications attached to the Perry & Fitzgerald patent?

A. I have.

35 int. Could you without witnessing the making of bread by this process, take these specifications, and yourself make good bread from them?

372 A. I think I could, from those specifications, direct a proper mechanic to construct an apparatus, by which good bread could be made by those who are expert bakers.

37 int. Could you without the aid of persons who are expert in making bread by this process?

A. I think it might be done with some sacrifice of material, in a short time, by proper experiment with the apparatus.

38 int. Does not the quality of the bread depend upon the temperature of the gas, the amount of pressure in the mixer, and length of time employed in kneading or in mixing, and various other conditions for which no directions are given in the specifications?

A. I would reply to the three, first three explicit statements in the query, that the quality of the bread would be varied, in a measure, by any modification from the conditions found by experience to be successful. As to the latter part of the query, I cannot reply, unless it is made more explicit.

373 39 int. Could an ordinary mechanic, who was likewise a practical baker according to the old method, take the machinery of Dake & Woodman, and the specifications attached to Perry & Fitzgerald's patent, and without further knowledge on the subject, manufacture good bread by this process?

A. The process requires several different kinds of expert labor—a good fireman and engineer, a man educated to prepare and purify the gas, and an expert baker. That is as near as I am able to answer the question.

40 int. Suppose the several experts named in your last reply to undertake the making of bread by this process, with the aid of the machinery recommended in the specifications attached to Perry's & Fitzgerald's patent, and with the further aid of the specifications themselves, but with no experience in making bread by this process, would they be able to make aerated bread successfully, without preliminary experiments?

A. I must answer the question with the qualification that much would depend upon the intelligence of the individual.

374 41 int. Assuming that they had the highest degree of intelligence of ordinary persons in the several departments you have specified?

A. Any man, expert in but one branch of the process, attempting to direct the process, unaided by any experts, would probably fail to produce bread of the first quality, in his early experiments. That is as near as I can answer.

42 int. Supposing three persons undertake the making of bread by this process, the first a competent fireman and engineer, the second a man skilful in the preparation and purification of carbonic acid gas,

the third a practical baker of the old school—supposing they have for their guidance this patent, with the specifications and drawings thereto attached; and supposing also, that they have machinery made precisely like the drawings attached to the patent, could those three persons without making preliminary experiments, and guided only by the specifications attached to the patent, succeed in making good aerated bread?

A. Presuming each man to be one of ordinary intelligence in his own department, I suppose they could. Probably the first bread
375 would be spoiled by the foulness of the machinery, &c., but disability to turn out finished work is incident to the setting up of all machinery. After the machinery got to running well, they should make good bread.

43 int. What is there in the specifications to direct as to the amount of pressure?

A. The specifications appear not to be specific as to the amount of pressure, using the words "under heavy pressure."

44 int. Would not, then, the amount of pressure have to be determined by experiment, even if skilful labor were to be employed?

A. It would have to be determined by drawing from the cock, and it is impliedly directed that the party who draws the dough should be an expert, who would know from its appearance when the dough is sufficiently charged with gas.

45 int. Would a person familiar with the appearance of dough made by the old method, be competent to decide, after experiment, when dough mixed by this process was in a proper condition for baking?

A. He would probably approximate, but might not certainly
376 succeed in his experiment.

46 int. Is there anything in the specifications to determine the proportionate size of a kneader to a given quantity of flour?

A. Nothing, that I recollect.

47 int. Would it not be necessary to ascertain that proportion by experiment before the work could be successfully done?

A. The success of the experiment would be more dependent on the pressure of the gas, than on the quantity worked at any given time, in the aparatus.

48 int. Is there anything in the specifications that shows the degree of consistency desired in the dough?

A. None, that I have noticed.

49 int. Would it not be necessary to ascertain this particular before bread could be successfully made?

A. To produce first quality of bread, at the first experiment, something should be known of it.

50 int. Would the experience of a baker, skilled in making bread by the old process, aid him in this particular?

A. I think it would.

51 int. How, if by the old method of making bread the
377 dough was stiffer than by this method, would his experience aid him as to this question of consistency?

A. He would probably find difficulty in its discharge under pressure, which would inform him that his dough was not sufficiently thin.

52 int. Would not that discovery come of experiment?

A. It would come at the time of the first experiment made upon the discharge of the dough; on inspecting the dough at the first discharge.

53 int. Supposing the dough to be too thin, would there not likely be a failure in the bread?

A. In that case there would probably be much puffiness of the crust, and a space between the crust and central portion of the loaf, with less equable rising of the mass of the dough; what I mean is, the crust would rise and leave a space between the crust; on taking the crust off there would be quite a hollow space, and the bread would be less evenly raised. Without being a baker, that is
378 what I think would happen.

JAS. V. Z. BLANEY.

Subscribed before me this 12th day of March, A. D. 1866.

H. W. BISHOP,
Master, &c.

Dep. of C. B. Ayer.

Examination of C. B. Ayer:

C. B. Ayer, a witness for the complainant, being duly sworn, was examined in chief by Mr. Goudy, and testifies as follows:

1 Q. What is your name and occupation?

A. C. B. Ayer; am a mechanic.

2 Q. Are you the same C. B. Ayer who have testified before in this case?

A. I am.

3 Q. What business have you been engaged in since that time?

A. I have been, and am, superintending the bake shop of Messrs. Dade and Woodman.

4 Q. Have you had any connection with the manufacture of
370 aerate dbread during that time?

A. I have.

5 Q. Describe substantially, and as briefly as you can, the process used by you in making aerated bread?

A. I first admit a sufficient amount of water into an air-tight vessel to mix or prepare two barrels of flour; then I close the vessel up air tight and exhaust the atmospheric air and admit the carbonic acid gas, at the same time setting the blades in motion and keeping them in motion until the dough is sufficiently light to draw off into loaves. Our pressure guage usually indicates from a hundred and twenty to a hundred and forty pounds, to the square inch, when the dough is in proper condition to draw.

6 Q. How is the dough drawn from the kneeder, and into what?

A. By means of a stop cock, nearly on the same principle of—I should have said made nearly like—a common water cock. It is drawn off in a pan sufficiently large to contain the required amount of dough for a loaf, the pan at the same time setting on a scale guaged
380 at the right weight.

7 Q. Is the dough baked in the same pan?

A. It is.

8 Q. To what degree is the atmospheric air exhausted in order to make good bread?

A. The vacuem is aerated as perfect as our air pumps can be made to work. I don't consider our vacuem perfect even if we pump all we can.

9 Q. By what machinery is the atmospheric air removed from the kneader?

A. By suction pumps made similar to that of a water pump, puppet valves, varying in size from three quarters of an inch to an inch and a quarter in diameter, the valves having an eighth of an inch lift.

10 int. By what machinery is the carbonic acid gas injected?

A. By the same pump that is used for aerating the vacuem.

11 int. Where is the air pump for exhausting the atmospheric air attached to the mixer?

A. It is attached to the top.

12 int. Where is the connection made for injecting the gas?
381 A. We exhaust the air out through the same pipe that is used for injecting the gas into the kneader.

13 int. Out of what materials is the carbonic acid gas made?

A. We manufacture it from sulphuric acid, marble dust, and water.

14th int. Is it a matter of any importance whether the gas is made from pure materials, or not?

(Question objected to.)

A. I think it is material.

15th int. Have you any personal knowledge in regard to that matter?

A. I have some.

16th int. Do you know of gas being made from any other materials thrn those you have mentioned?

A. I have not heard of or seen any others used

17th int. Have you ever made any actual experiments in making aerated bread with said machinery, without exhausting the atmospheric air?

A. I have.

18th int. State the result of your experiment?

A. It was a failure.

19th int. What kind of bread did it make?
382 A. It was very unpleasant, had a disagreeable smell, and bad color.

20th int. When did you first ascertain the effect of leaving atmospheric air in the mixer?

A. In operating for Mr. Kendall.

21st int. Did it occur more than once while you were at work for Mr. Kendall? And if so, how many times?

A. On several occasions; I could'nt tell how many times.

22nd int. Was it always a failure?

A. It was always so pronounced by Mr. Kendall.

23d int. What is your statement in regard to it? Does it make good or bad bread?

A. Bad, decidedly.

24th int. Did you make an experiment in the establishment of Dake & Woodman near the first of January last, under the direction of Mr. Woodman?

A. I did.

25th int. What was the result of that experiment?

A. A failure, as usual.

26th int. Describe the character of the bread that was produced.

A. It had a very bad color and smell.

27th int. Was it fit for use, as food?

383 A. I did'nt consider it fit for use.

28th int. Was it of the same character as the bread you made by the use of atmospheric air at Mr. Kendall's?

A. The same precisely, to all appearances.

29th int. In making the experiment at Dake & Woodman's, did you go through the same process that you ordinarily do, with the exception of allowing the atmospheric air to remain in the kneader?

A. I did.

30th int. State whether or not good bread can be made, in your opinion, without exhausting the air from the kneader or mixer?

A. In my opinion it can not.

31st int. Do you know what effect the handling of the dough, after it has been discharged through the cock from the kneader, would be on is?

A. It causes the gas to escape from the dough, and consequently the dough would be very heavy.

32nd int. If the dough was discharged in a mass from the bottom of the kneader, and then cut into loaves of the required size and placed in pans and conveyed to the oven, what effect would it have upon the character of the bread?

384 A. In every instance of the kind I have seen the bread was very dark and heavy and unfit for use, with one exception.

33 int. State what that exception was.

A. It was an experiment of my own, assisted by a baker. We prepared a few loaves, but didn't work it enough to let the gas escape. On that occasion the bread was not nice.

Cross-examination:

1 cr's-int. When the dough is forced out by the pressure inside, do you cut it off in pieces of the required size to form a loaf, cakes, &c.?

A. The cock is opened, and a sufficient amount allowed to pass through, and then the cock is closed.

2nd cr's-int. Do you cut off the dough?

A. We close the cock, separating the small amount from the large. I don't know what you mean by cutting it off; you might "cut it off" with a knife, or a shovel, or a stick of wood. I don't understand the expression.

3rd cr's-int. Do you cut it off in pieces?

A. Yes; it is cut off in pieces by means of the stop-cock.

385 4th cr's-int. Is it not in such a fluid state that it runs out?

A. No; not without pressure above.

5th cr's-int. Is it not in such a fluid state as that it is forced out by the pressure above in a stream?

A. No sir; the pressure alone drives it out.

6th cr's-int. Does it not come out in a stream rather than in a solid form?

A. I can't call it a stream, I should call it a column. If it was in a liquid state it would be apt to run out of its own accord; but as it is in a stiff, hard substance, nearly, if not quite, as hard as that molded by hand, it requires a high pressure to force it through the stop-cock.

7th cr's-int. Is it not much less consistent than the ordinary dough, than dough prepared in the ordinary way?

A. A very little less; in some cases I have seen it stiffer than ordinary dough.

8th cr's-int. Is it ordinarily stiff enough to be cut by a knife into pieces?

A. I think it could be divided by a knife.

9th cr's-int. Could it be cut by a knife?

A. Sometimes, but not always. It depends upon what kind

386 of flour we are using.

10th crs.-int. Which has the most specific gravity, atmospheric air or carbonic acid gas?

A. Do you mean which is the heaviest?

11th cr's-int. Yes, sir.

A. Carbonic acid gas, I should think.

12th cr's-int. If you poured carbonic acid gas into a vessel containing atmospheric air, would it not sink to the bottom—displace the atmospheric air?

A. I think by my experience that it will mix.

C. B. AYER.

Subscribed before me this 12 day of March, A. D. 1866.

H. W. BISHOP, JR.,
Master.

All of which is respectfully submitted.

HENRY. W. BISHOP, JR.,
Master in Chancery of Circuit Court
of United States, Northern District of Illinois.

The above and foregoing testimony was by consent taken down in short hand by Mr. Burnham, and afterwards written out in

387 words, but read over and subscribed by the witnesses in presence of the master.

H. W. BISHOP, JR.,
Master, &c.

[5-ct. stamp cancelled.]

Endorsed: Filed March 15, 1866. Wm. H. Bradley, cl'k.

388 4. Depositions of James M. Bremner & C. B. Ayer, taken before O. R. W. Lull, as follows, to wit:

389. Circuit Court of the United States for the northern district of Illinois.

JOSEPH M. DAKE
vs.
ORRIN KENDALL.

Depositions for complainant, taken by agreement before O. R. W. Lull, notary public, at his office in the city of Chicago, instead of before the master, to whom said cause was referred, this 31st day of August, A. D. 1865, at the hour of 10 a. m. Messrs. D. C. & I. J. Nichols, and Messrs. W. C. Goudy, for defendant; and Messrs. Woodbridge and Grant for complainant.

Both parties appeared by their respective solicitors aforesaid, when—

390 *Deposition of James A. Bremner.*

James A. Bremner, a witness of lawful age, called on the part of said complainant, being first duly sworn, in answer to the several interrogatories, deposeth as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is James A. Bremner; my age is 28 years; my residence 105 West Polk st., Chicago; my occupation is agent for J. M. Dake & Co. in delivering bread.

Int. 2. Do you know the parties to this suit, or either of them? If yea, how long have you known them?

Ans. I know both of the parties. I have known Mr. Kendall 8 or 9 years, and Mr. Dake between 4 and 5 years.

Int. 3. Have you had any business connection with the defendant, Oren Kendall? and if so, what was it?

Ans. Yes; I was agent for Mr. Kendall over a year.

Int. 4. When did you commence such agency, and when did it close?

Ans. It commenced the last of March or 1st of April, 1864; it ceased in June, 1865.

Int. 5. What did you do as such agent?

Ans. I sold breadstuff of all kinds.

Int. 6. Did you sell at Mr. Kendall's place of business, or carry the breadstuffs around to the customers.

391 Ans. I carried it around the city to customers.

Int. 7. Who owned the wagons in which the stuff was carried?

Ans. I owned them myself.

Int. 8. What compensation did you receive?

Ans. Twelve cents on the dollar.

Int. 9. Did any other person than yourself sell and deliver breadstuffs throughout the city for Mr. Kendall during the time you were in his employment?

Ans. Yes; Mr. Kendall had one man selling direct from the bakery.

Int. 10. At what time was this man so engaged?

Ans. Well, he was so engaged all the time that I had an agency for Mr. Kendall.

Int. 11. What was his name?

Ans. John Lyons.

Int. 12. Did he sell on a commission and deliver to customers generally throughout the city, or carry and deliver the breadstuffs to the depots where it was kept to sell?

Ans. He had no commission; he delivered at the depots where it was kept to sell.

Int. 13. When did Mr. Kendall commence to sell the aeratep bread?

Ans. About the 1st of October, 1864.

Int. 14. Was there any period of time between the 1st of October, 1864, and the time you left Mr. Kendall's employment that he
392 did not have the aerated bread for sale.

Ans. None; but sometimes, when the machinery broke, when they could not bake it, and one week or nearly so when they were moving the machinery from one bakery to another.

Int. 15. When was it that the machinery was moved?

Ans. It was sometime after the 1st of June, 1865. I do not know the date.

Int. 16. How much time between the first of October, 1864, and the 20th of April, 1865, was the defendant unable to bake the aerated bread?

Ans. I don't remember more than one day.

Int. 17. State, if you know, how much of the aerated bread during said period of time was unfit for market.

Ans. To the best of my knowledge there was not more than $25 or $30 dollars worth.

Int. 18. Who first had charge of baking the aerated bread for Mr. Kendall?

Ans. Mr. John Weeks, I believe.

Int 19. Did you sell aerated bread during the time he was baking it?

Ans. Yes; my wagons carried out some of it.

Int. 20. Did you sell all that you received?

Ans. All with the exception of a few loaves that might have been returned at night more than they needed, as they do with any kind of bread.

Int. 21. How much, if any, did you fail to sell because
393 it was of bad quality, between the 1st of October, '64, and the 1st of March, '65.

Ans. The most always sold what they took out, with the exception of a few loaves that they might return at any time.

Int. 22. Did you return any aerated bread because it was so bad that it could not be sold?

Ans. There might have been two or three times, when it was'nt baked.

Int. 23. State, if you know, the quantity of flour Mr. Kendall baked into aerated bread, commencing at about the 1st of October, 1864?

Ans. A part of the time they run 7 barrels a day; a part of the time, night and day, they run as high as 20 barrels.

Int. 24. Was there any time from about the 1st of October until the 1st of March, that Mr. Kendall baked less than 7 barrels per day?

Ans. There might have been for the first month.

Int. 25. How much did he bake during that month per day?

Ans. To the best of my knowledge from 3 to 7 barrels.

Int. 26. What was the demand for aerated bread?

Ans. After the 1st two months it was more than we could supply.

Int. 27.

Direct examination closed.

394 Cross-examination:

Cross-int. 1. When did you first enter the employ of Orrin Kendall?

Ans. It must be nearly 9 years ago.

Cross-int. 2. How long did you continue with him?

Ans. I left him 3 times during that time; can't say exactly how long I continued with him.

Cross-int. 3. About what part of the last 9 years have you been out of his employ?

Ans. About two years.

Cross-int. 4. How were you first employed by him?

Ans. In his bakery, working on crackers.

Cross-int. 5. From whom did you purchase the horses and wagons with which you carried on the business of your agency?

Ans. I purchased 4 horses from Mr. Kendall and got 2 wagons built new.

Cross-int. 6. Did you not buy wagons of Mr. Kendall?

Ans. I bought 2 old wagons after they were thrown aside for $80, of Mr. Kendall.

Cross-int. 7. Had not the wagons you bought of Mr. Kendall been run constantly up to the time when you bought them to supply Mr. Kendall customers?

Ans. I run the wagons till I got my own built. I run them myself up to that time, till I got my own built. It was more than a month after I quit running them before I bought them.

395 Cross-int. 8. Did you buy Mr. Kendall's waggons at the same time you bought his horses?

Ans. No.

Cross-int. 9. Which did you buy first?

Ans. The horses.

Cross-int. 10. How long first?

Ans. Over two months.

Cross-int. 11. How long after you bought the horses were your new waggons completed?

Ans. Over one month.

Cross-int. 12. Did not you buy any waggons at the time you bought the horses.

Ans. I did not.

Cross-int. 13. Were not the waggons you bought of Mr. Kendall used constantly until your new waggons were completed?

Ans. I had the use of those waggons by Mr. Kendall's consent, if I'd keep them in repair till mine were done.

Cross-int. 14. Are you not now using the wagons you bought of Mr. Kendall.

Ans. I had 2 rebuilt, and commenced to use them in July or August, 1864; one for a bread waggon and the other for a grocery waggon.

Cross-int. 15. What has become of the third?

Ans. Mr. Kendall built it up and is useing it himself.

Cross-int. 16. Did not Mr. Kendall sell you his horses and
396 wagons entirely on credit, with the express understanding that you should supply his customers?

Ans. Mr. Kendall sold me the horses on credit which I gave him a note for. He demanded the money before it was due and I gave it to him. I was running an account with Mr. Kendall at the time, and the 2 waggons were charged to me. There was no such understanding to my knowledge.

Cross-int. 17. Did you immediately, on the purchase of the horses, commence supplying Mr. Kendalls's customers?

Ans. I immediately, on the purchase of the horses, commenced to supply customers, which I supposed were mine, according to the way we were doing business.

Cross-int. 18. Did you not supply them from Mr. Kendall's bakery?

Ans. The bread that I supplied them with was from Mr. Kendall's bakery, charged to my account.

Cross-int. 19. Had they not previously been Mr. Kendall's customers principally?

Ans. They were, to the best of my knowledge, Mr. Dake and Mr. Kendall's son's customers.

Cross-int. 20. From whom did you ascertain the names of these customers, and who introduced you to them?

Ans. The 2 men that were driving.

Cross-int. 21. For whom were these men driving?

Ans. I supposed they were driving for Mr. Kendall's sons, as
397 the business was not settled up, and Mr. Kendall had not yet taken hold of it.

Cross-int. 22. Did you not understand when you bought the horses that Mr. Kendall had succeeded, or was to succeed, to the business of his sons?

Ans. I understood that he was to succeed, but it was before that I that had taken hold of the business.

Cross-int. 23. When you bought the horses, was it not with the understanding that you were to supply the customers whom the drivers who informed you of them had formerly supplied?

Ans. Yes; with the exception of some whom Mr. Kendall supplied with his own waggon.

Cross-int. 24. When you bought the horses, was it not with the understanding that Mr. Kendall would supply you with bread and other things with which you supplied the customers?

Ans. He was to supply me with what I wanted.

Cross-int. 25. How long before the note that you gave for the horses fell due, according to its terms, did you pay for the same?

Ans. It might be 3 month or more.

Cross-int. 26. Was not that note payable on demand?

Ans. The note was a judgement note, drawing 10 per cent interest, which Mr. Kendall agreed not to call for till due. To the best of my knowledge it was payable on demand.

398 Cross-int. 27. How long after its date did you pay it?

Ans. It might have been 9 months or less.

Cross-int. 28. When did Mr. Dake first propose to you to enter his employ?

(Objected to.)

Ans. Mr. Dake made no proposition to me to enter his employ; he told me he owned the patent for the aerated bread, and that I could have a chance if I wished; that was about the middle of April.

Cross-int. 29. Where?

Ans. One evening I went into his store to get some biscuit for my house.

Cross-int. 30. When did he tell you what percentage he would allow you for selling for him?

(Objected to.)

Ans. I don't think he told me what percentage he would give me at all.

Cross-int. 31. When was the percentage you was to receive settled between you?

Ans. There never was any settlement. I went right on and did the business as I had done for Mr. Kendall, and through his clerks received the same percentage.

Cross-int. 32. When Mr. Dake told you that he had bought the patent for making aerated bread, and that if you wished, you could have a chance, did he not say to you, that he would allow you the same percentage that Mr. Kendall did, or words to that effect?

399 Ans. I do not remember anything to that effect.

Cross-int. 33. How do you know that you are to receive from Mr. Dake the same percentage that Mr. Kendall gave you?

Ans. I receive it when I settle up my account.

Cross-int. 34. Was nothing said about the matter of compensation before your first settlement?

Ans. Not one word.

Cross-int. 35. Is not your account kept on the books of Dake & Woodman, and are you not there charged with all the materials you take from the store and credited with your commission and what you return in money and material?

Ans. It is; and I also keep a private account. I am credited with no commissions; I am credited with the money I return, and material.

Cross-int. 36. Are not you charged on said books with 12 per ct. less than other customers; and is not that the way you get your commission?

Ans. I take out my commission, and am charged with the balance.

Cross-int. 37. Are you charged with stock as you receive it?

Ans. Certainly.

Cross-int. 38. When you received your first stock from Dake & Woodman, how did you determine what you should take out as commission in order to settle your debit?

Ans. I took out the 12 per ct.

400 Cross-int. 39. Was nothing said about it on that occasion?

Ans. No.

Cross-int. 40. Who delivered the stock to you?

Ans. The employees of Dake & Woodman.

Cross-int. 41. Was the charge made against you at that time?

Ans. Yes.

Cross-int. 42. By whom?

Ans. By the emplyees.

Cross-int. 43. What is the name of the employee who made the charge?

Ans. Mr. Putman.

Cross-int. 44. Did you figure the am't of stock delivered to you, and deduct the 12 per cent., and show your figures to Mr. Putman to enable him to make the charge?

Ans. Yes.

Cross-int. 45. Was Mr. Dake present?

Ans. No; not to my knowledge.

Cross int. 46. Did Mr. Putman make any remarks about your figures? if so, what?

Ans. I don't remember of any remarks made between us.

Cross-int. 47. Did Mr. Dake know before this the percentage that you were to charge?

Ans. He knew the percentage I was getting from Mr. Kendall.

Cross-int. 48. How did he know it?

Ans. He had heard me speak of it several times.

Cross-int. 49. Did he not on one of these occasions say, in substance, that he'd allow you the same commissions, or words to that effect?

Ans. I don't remember his ever saying it.

Cross-int. 50. When you entered the employ of Dake & Woodman, was it not with the understanding that you should receive the same commissions that you had received from Mr. Kendall?

Ans. I expected the same, but I made no arrangement to that effect.

Cross-int. 51. Did not Mr. Dake know that you expected the same commissions that you had received from Mr. Kendall?

Ans. I do not know that he did. I suppose I expected to give it to me.

Cross-int. 52. When Mr. Dake told you that he had bought the patent, and that he'd give you a chance if you wished, were you not acting as agent for Mr. Kendall?

Ans. I was.

Cross-int. 53. While you were agent for Mr. Kendall, how much was you in his store?

Ans. I was out and in a good part of the day every day; sometimes forenoon and sometimes afternoon.

Cross-int 54. In what part of the store?

Ans. I was all over the store.

Cross Int. 55. To what part of the store did your business principally call you?

401 Ans. My business principally called me to the office and not the store.

Cross-int. 56. Did not your drivers receive the stock from the store and distribute it to customers?

Ans. Partly from the store, and partly from the cracker room.

Cross-int. 57. Were you present when the stock was delivered to the drivers every day?

Ans. Sometimes I was, and sometimes not. I generally looked after them.

Cross-int. 58. Was not your principal part of the business the financial part of it; settlement with the drivers, and with Mr. Kendall?

Ans. Yes; that was the principal part.

Cross-int. 59. Was not the stock often delivered to the drivers before you got down in the morning?

Ans. A part of it.

Cross-int. 60. Was not more stock delivered to your drivers in your absence than in your presence?

Ans. I think so.

Cross-int. 61. In making charges to you, did Mr. Kendall charge each item, or the gross am't delivered to you each day?

Ans. Each item.

Cross-int. 62. Supposing he delivered to you two kinds of bread, did he make two items, or a single charge?

Ans. Sometimes two, and sometimes add them together if they were both one price.

402 Cross-int. 63. How many loaves of areated bread can be made out of a barrel of flour?

Ans. That is according to the heft of the loaf; state the heft of the loaf, and I can tell you.

Cross-int. 64. Did Mr. Kendall make loaves of more than one weight of aerated bread?

Ans. They varied according to the price of flour.

Cross-int. 65. How many loaves of aerated bread weighing 1½ lbs., can made from a barrel of flour.

Ans. About 200; might be a little more, and a little less; we have had as high as 215.

Cross-int. 66. Is not a pound and a half about the average weight of a loaf of aerated bread made by Mr. Kendall?

Ans. I cannot say that that was at the time I was with him.

Cross-int. 67. About what number of loaves of aerated bread, such as Mr. Kendall furnished you, could be made from a barrel of flour?

Ans. Sometimes 210; sometimes 200.

Cross-int. 68. About what proportion of the aerated bread made by Mr. Kendall while you were his agent did you sell?

Ans. Sold all we could get; the greater portion that he made.

Cross-int. 69. About what proportion did you sell in October, 1864?

Ans. I could not tell exactly; we were just introducing it.

403 Cross-int. Did you sell one-half?

Ans. I didn't keep any account; couldn't say that I did or did not. It was thrown in with other bread.

Cross-int. 71. Did you sell 200 loaves per day, during October, of aerated bread made by Mr. Kendall?

Ans. Can't say; might have sold more or less.

Cross-int. 72. Did you sell any aerated bread made at Milwaukee, during October?

Ans. No.

Cross-int. 73. How do you know the number of barrels of flour made into aerated bread by Mr. Kendall, during October, per day?

Ans. By being there and asking the men who were baking it.

Cross-int. 74. Do you know, of your own personal knowledge, how many barrels of flour per day Mr. Kendall made into bread while you were his agent?

Ans. Only by asking the men. I have also sometimes heard Mr. Kendall say how much they baked.

Cross-int. 75. Have you ever heard Mr. Kendall say that baked 7 barrels per day during October, 1864?

Ans. I don't remember that I did.

Cross-int. 76. What have you head Orin Kendall say about the amount per day of aerated bread manufactured by him?

Ans. I heard Mr. Kendall say, mornings when he came,

404 and we wanted more bread than was baked, that it run so many barrels, sometimes 9, sometimes 10; that was in January, and February; that was on one watch; then there was a watch in the day time that run about 8 barrels.

Cross-int. 77. How do you know that Mr. Kendall referred to the production of one watch?

Ans. There was only one watch remaining at night on that kind of bread.

Cross-int. 77. Did you ever hear him make the remark you have imputed to him before the latter part of February, 1865?

Ans. Yes.

Cross-int. 78. Was there not a considerable increase in the am't which he manufactured about the 1st of March, 1865?

Ans. There was a considerable increase from the 1st of January, 1865.

Cross-int. 79. Was there not a great increase in the manufacture and sale of bread about the 1st of March, '65?

Ans. I did not find any more increase in March than I did in February; we sold all we could get.

Cross-int. 80. How about the demand in December, 1864?

Ans. The demand increased daily.

Cross-int. 81. How about the demand in November, 1864?

Ans. It was not so great; we were then introducing it; there
405 were many groceries who did not know what it was. We found it sold everywhere we introduced it.

Cross-int. 82. How did the aerated bread made in November last, compare in quality with that made in Februrry last?

Ans. Not so good as that made in February; they gave for their reasons that their gas machinery was not good; they bought some more machinery, and the bread was better after that. T———

(That part of the answer objected to in which witness speaks of the reasons as not being reponsive.)

Cross-int. 83. Who assigned the reasons which you have stated in your last answer?

Ans. The men working at it, and Mr. Kendall's son.

Cross-int. 84. What are the names of these men?

Ans. John Weeks was the foreman, and the man that run it. The names of the others I do not know.

Cross-int. 85. Did you know when they got the new machinery? If so, state.

Ans. I do not know the date.

Cross-int. 86. Was it before or after Weeks left the employ of Mr. Kendall?

Ans. It was after.

Cross-int. 87. Which son of Mr. Kendall told you that their failure to make good bread was due to a defect in the machinery?

Ans. Cornelius.

406 Cross-int. 88. When did he tell you so?

Ans. In November or December; he also made the remark after the machinery came that now we'd have good bread.

Cross-int. 89. How did the bread, made by Mr. Kendall in January compare in quality with the bread made in Milwaukee?

Ans. They were about alike.

Cross-int. 90. Was there any Milwaukee bread used in this city during the months of December and January last?

A. I think so.

Cross-int. 91. Did you make the effort in those months to supersede the Milwaukee bread where it was used, by the introduction of Mr. Kendall's bread?

Ans. Yes.

Cross-int. 92. With what success were your first efforts met?

Ans. With very good. They would take ours in preference to waiting to get it from Milwaukee.

Cross-int. 93. Which bread was then the best in quality?

Ans. There was very little difference; that from Milwaukee was rather the lightest bread.

Cross-int. 94. Did you ever make to John Woodbridge, jr., the statements contained in the paper now shown you, and did you swear to them before him?

A. Yes; I did.

(Paper here introduced and handed to commissioner, and annexed by him to this deposition as exhibit A.)

407 (Question and answer objected to.)

Cross-int. 95. Did you believe those statements to be true at the time you made them?

(Objected to.)

A. I did; according to my memory.

Cross-int. 96. How do you know that between October and April last there was not made in Mr. Kendall's shop more than from $20 to $30 worth of aerated bread which was unfit for market?

Ans. I knew from the first that pretty much all that was baked then, was baked in the day time, and that the drivers took off the bread and sold it, with the exception of two or 3 times.

Cross-int. 97. How long after Woodman returned from Cincinnati at the time he contracted to purchase the patent from Pendleton, or about how long after, did Dake tell you that he had bought the patent?

Ans. I didn't know that Mr. Woodman went to Cincinnati.

Cross-int. 98. Was it before or after the 20th of April last that Dake told you he'd bought the patent?

Ans. I don't remember the date. It was in April, I think; it must have been after the 20th.

Cross-int. 99. Did Dake ever inform you of his intention of purchasing the patent before this time?

Ans. I never knew but what Mr. Kendall owned the patent all the time; Mr. Dake never told me.

Cross-examination closed.

408 Direct examination resumed:

Int. 28. Was Orin Kendall in the bakery business during all the time you first worked for him until last June?

Ans. No.

Int. 29. How long was he out during that time?

Ans. I don't know exactly; it might be a year or a year and a half; I don't know the time.

Int. 30. Who carried on the business at that stand while he was out?

Ans. Mr. E. K. Kendall, Mr. J. M. Dake, James Kendall, to the best of my knowledge.

Int. 31. At what time did they cease and Orrin Kendall resume business?

Ans. In January, 1864, some time; don't know the day.

Int. 32. As a matter of fact, as the business is conducted in this

city of selling bread, whose customers are the people who buy the bread, the driver's who delivers it, or the man's who bakes it?

Ans. If the man who bakes it employs the driver, the customers are his. If the driver owns the team and the man sells him the bread, the driver is the man that owns the customers.

Int. 38. Have you known of any instances where drivers have changed from one bakery to another? and if so, does such change give him a new set of customers, or does he, in the main, con-
409 tinue to deliver to those whom he served before?

Ans. I have known instances. He continues to deliver to those whom he served before—all those that wish to buy of him. They invariably deal with the drivers.

Int. 34. Did Mr. Kendall agree with you to wait any specified time for the payment of the judgment note you gave him for the horses? and if so, how long?

Ans. He agreed to wait one year.

Int. 35. Have you refreshed your recollection since the cross-examination commenced in regard to the amount of aerated bread sold by you while in Mr. Kendall's employ? and if so, state what the amount was, from time to time, as nearly as you can.

Ans. I have; by looking at my book and talking with my drivers, I find in October and November, 1864, they were selling about 600 loaves per day of aerated bread. In December as high as 1,000, or more. In January and February, as high as 1,500. In March and April, and up to the time I left them, about 2,500 per day.

Int. 36.

Direct examination closed.

Cress-examination resumed:

Cross-int. 100. Did not your sales of aerated bread steadily increase from the 1st of January until the latter part of Feb-
410 ruary, 1865?

Ans. Yes; they increased right along.

Cross-int. 101. What notice did you give Orin Kendall of your withdrawal from his service?

Ans. I did not consider myself in his service.

Cross-int. 102. What notice did you give Orin Kendall that you intended to withdraw your patronage from him?

Ans. A few hours.

Cross-int. 103. Had he, at the time you left him, any facilities for disposing of his stock to supply the place which you vacated?

Ans. I believe he had 2 single waggons.

Cross-int. 104. Was he not using those 2 single waggons to supply his depots and carry out packages under the charge of John Lyons?

Ans. A part of the time they were so employed.

Cross-examination closed.

J. A. BREMNER.

Sworn before me Aug. 31, 1865.

O. R. W. LULL,
Notory Public.

411 *Deposition of C. B. Ayres.*

Cyrus B. Ayres, a witness of lawful age, on the part of complainant, being first duly sworn, in answer to the several interrogatories, testified as follow, viz:

Int. 1. What is your age, residence and occupation?

Ans. My age is 31 years; my residence is Chicago; my occupation that of an engineer.

Int. 2. Do you know the parties to this suit, or either of them? and if so, how long have you known them or either of them?

Ans. I have known Mr. Kendall about 10 years, and Mr. Dake, I think, about 5 years.

Int. 3. Are you called by any other name than Cyrus B. Ayres? and if so, what?

Ans. I am; by the name of Yankee.

Int. 4. How long have you been in the employment of Orrin Kendall?

Ans. I think about 8½ years.

Int. 5. When did that employment cease?

Ans. I think about the middle of June last.

Int. 6. During that 8 years and a half, did you have any written contract with Mr. Kendall? and if so, did you have more than one?

Ans. I had one only.

Int. 7. Look at the paper now shown you, and state whether
412 that is or not the contract to which you refer.

Ans. It is.

(The witness here hands to the notary a paper writting, as the contract referred to, and which is the same one by the notary copied into the answer to interrogatory No. .)

Int. 8. Did the defendant use any other precaution or means than taking such written contract to prevent your leaving his service? and if so, what was it?

Ans. Yes; he offered me, as an inducement, more money.

Int. 9. Was any oath administered to you? and if so, what was it, and by whom was it administered?

Ans. There was no oath administered to me; but I was requested to take an oath.

Int. 10. By whom?

Ans. By Mr. Kendall.

Int. 11. What oath did he request you to take?

A. To remain in his employ.

Int. While you were in the employment of Mr. Kendall, did you make any aerated bread, and if so, when did you commence and how long did you continue to work at it?

Ans. I did. I commenced, I think, about the 1st of December, 1864, and worked at during my stay with him.

Int. 13. Did Cornelius Kendall work with you? and if so, when and for how long a time?

Ans. He did, and remained permanently with me, I think,
413 three days and a half from the time I commenced.

Int. 13. Did he help you to make aerated bread any time after that?

Ans. He made suggestions, but did not help make the bread.

Int. 15. Look at the paper no shown you marked Exhibit 1, and state whether you have ever seen said paper before? and if so, when you you first saw it?

Ans. I have seen it before. I think I first saw it about one week previous to my leaving Mr. Kendall.

Int. 16. Were any written instructions furnished you at the time you first commenced to make aerated bread?

Ans. There were not.

Int. 17. How did you get information in regard to the process?

Ans. From an engineer in Milwaukie; from seeing Mr. Kendall operator make it, and from suggestions of Cornelius Kendall.

Int. State the process by which you first undertook to make the aerated bread.

Ans. The first process was conducted by Cornelius Kendall, and I do not remember the process.

Int. 19. Was it successful?

Ans. It was not.

Int. 20. State the process which you first used in making the bread?

414 Ans. As near as I can remember, I put 140 lbs of water; the salt dissolved in it; then, bolted down 1 barrel of flour, closed the kneader air tight, pumped off the natural air, set the arms in mation, pumped up 150 lbs. of carbonic gas, kept the arms in motion until I thought the dough was right.

Int. 21. Do you know how many revolutions you made per minute, and how long the motion was continued in that experiment?

Ans. I do not.

Int. 22. Was this effort successful?

Ans. It was pronounced good by Mr. Kendall and his agents.

Int. 23. What time did you make this experiment?

Aus. It was the same day after Cornelius Kendall left me.

Int. 24. Did you continue to use the same process afterwards, or did you vary it?

Ans. I varied it every day for some 2 or 3 weeks.

Int. 25. What was the effect of these variations?

Ans. A variation in the quality of bread.

Int. 26. While you were making these experiments, did you succeed in getting better bread at each effort, or was it sometimes better and sometimes worse?

Ans. It was sometimes better and sometimes worse.

Int. 27. Did you finally learn how to make good bread without failure?

Ans. I thought that I had; but I have since found out that I knew nothing about it, nor have not known anything about it until
415 within 4 weeks from this date; was then taught by Joseph M. Dake.

Int. 28. Have you read the patent and specifications for raising the dough to make aerated bread?

Ans. I have.

Int. 29. Can the dough be raised and drawn off without using the principle claimed by the patentee?

(Objected to.)

Ans. It cannot.

Int. 30. Did you ever make any bread that was fit for the market, without following substantially the specifications attached to the patent?

(Objected to.)

Ans. I pretend that no man can make bread under that patent with that machinery without working substantially under the patent.

Int. 31. What were the changes that you made from time to time while in the employment of Mr. Kendall in the process of making said bread.

Ans. In applying more or less water, more or less gas, more or less mixing.

Int. 32. How do you determine when the dough is right for baking?

Ans. By its appearance in the pan after it is drawn from the kneader.

Int. 33. Can you tell from the number of revolutions per minute, and the number of minutes that has been occupied in kneading?

416 Ans. I can; but think it better to judge by the appearance of the dough.

Int.

The further taking of these depositions was continued to Sept. 1, 1865, at 10 o'clock a. m.

SEPT. 1, 1865, 10 *a. m.*

Parties present by their counsel, and the examination of the same witness was continued, as follows, viz:

Int. 34. Is there any fixed rule requiring a certain number of revolutions in a certain time to fit the dough for use, or do the revolutions and time vary according to circumstances?

Ans. The revolutions do vary according to circumstances, and that is the reason why we cannot have any fixed rule.

Int. 35. What suggestions did Cornelius Kendall make in regard to kneading the dough?

Ans. None of importance that I can remember.

Int. 36. Look at Exhibit No. 1, and state whether or not you have made good aerated bread according to the process described therein?

Ans. Yes, I have; I have followed it every day for the past 4 weeks.

Int. 37. Could you make good bread according to this process in the machine used by Mr. Kendall?

Ans. I can; and did do so for nearly two weeks previous to the removal of his machinery from the Dearborn st. shop to the

417 State st. shop.

Int. 38. Was the bread which you have made by following said process better or worse than that which you made by varying from it?

Ans. It averaged better.

Int. 39. How many barrels of flour per day did you bake for Mr. Kendall during the month of last December into aerated bread?

Ans. I cannot say positive, but I think we averagd about 5 barrels.

Int. 40. How many did you average per day during January last?

Ans. I don't think it would average far from 7 barrels.

Int. 41. How many during February?

Ans. I think about that time we were running 2 watches, day and night.

Int. 42. After you had commenced running 2 watches, how much could you bake per day?

Ans. From 16 to 18 barrels, providing there were no interruptions by breaking of machinery.

Int. 43. Give your best recollection as to the time you commenced running 2 watches?

Ans. I think it was some time in February.

Int. 44. How many barrels per day were baked from that time on until you left?

Ans. All we could possibly get through the machine, say from 16 to 22 barrels.

Int. 45. Was there any aerated bread made in Mr. Kendall's
418 establishment after the 1st of December, or about that time, which was not sold by him because of its bad quality?

Ans. I think there was some.

Int. 46. State as nearly as you can how much?

Ans. Not having the disposal of it, I could not estimate, but know that some was sold.

Int. 47. Do you know anything in regard to bread that was not considered saleable in the city, being sold and sent either to Camp Douglas, Camp Frey? and if so what?

Ans. Cannot say how it was considered in the city, but I have seen very poor aerated bread previous to the month of December, sent to camp Frey.

Int. 48. How much aerated bread, within your knowledge, was so bad it was thrown away after the 1st of December?

Ans. Four barrels of flour to my certain knowledge.

Int. 49. When was that?

Ans. It was during the months of December and January.

Int. 50. Did you make any experiments in regard to the number of revolutions required to make the dough fit for use? and if so what?

Ans. I did; and ascertained that good bread could be made when running one steady brand of flour. The rule would not apply to
419 all brands; what would be beneficial to one brand, would ruin another. I finally proved by experiments that the only safe way would be to judge by the speed of the engine and the appearance of the dough when drawn from the machine or kneader.

Int. 51.

Direct examination closed.

Cross-examination.

Cross-int. 1. What should be the number of the arms or knives used in the kneader to make good bread?

Ans. It depends on the size of the kneader, the speed of the machine. I think that six blades properly adjusted is sufficient for either a one or a two barrel mixer.

Cross-int. 2. How should they be adjusted?

Ans. So as to raise the dough when the power is applied to the shaft toward the upper part of the machine.

Cross-int. 3. What would be the effect if the arms were so arranged as to press the dough towards the lower part of the machine?

Ans. It is pressed there during the operation, but the same arms lift it again.

Cross-int 4. What would be the effect if the arms were so arranged as to gradually force the dough downward?

Ans. I don't see how that can be done as our machines are
420 now constructed. The effect would be ruinous in my opinion.

Cross-int. 5. Should the six arms be all placed upon the shaft, or some of them upon the sides of the kneader?

Ans. There are two pedestals on each side of the kneader above and below, which I do not consider essential in the process; but in my judgment six blades should be on the shaft, and this is all I consider necessary.

Cross-int. 6. Supposing 3 of the blades were upon the sides of the kneader, and 3 upon the shaft, those on the sides of the kneader and those on the shaft alternating, would that in your judgment be a proper arrangement?

Ans. I do not think it would be so convenient to operate, but could make bread; and in case there were but 3 blades on the shaft I should dispense with those on the sides.

Cross-int. 7. Would you consider the blades on the sides an injury?

Ans. I should.

Cross-int. 8. Should the blades be placed in a straight or in an oblique position?

Ans. It should be straight, but half twisted.

Cross-int 9. In making your revolutions should the upper or lower edge of the arms be in advance?

Ans. On a parallel shaft it would make no difference; but
421 on a perpendicular shaft the lower edge should have a forward movement, because if the upper edge had the forward movement, the motion would press the dough downwards.

Cross-int. 10. Should all the blades be twisted in the same way or not?

Ans. I think not on a parallel shaft, but don't see why they should not be on a perpendicular shaft.

Cross-int. 11. Upon what part of the shaft do you place the arms?

Ans. I do not know as it makes any particular difference, but would rather have the space evenly divided between each blade.

Cross-int. 12. How do you determine the size and width of the arms?

Ans. I should use my judgment, and calculate from the power it would require to drive them.

Cross-int. 13. Would the arms used in Mr. Kendall's kneader be suitable for Dake & Woodman's kneader?

Ans. They would if they were intended for a two barrel kneader instead of a one, but as it is they would not.

Cross-int. 14. Does not success in making bread depend somewhat on the size, number, and position of the arms in the kneader?

Ans. I think it does; because if there were but one arm we could not mix at all, and if all six were closed up together on one side of the kneader, the result would be the same.

Cross-int. 15. Does not the rapidity of revolutions required
422 in making bread depend somewhat upon the number of arms in the kneader?

Ans. I do not think the rapidity would make so much difference as the length of time in kneading.

Cross-int. 16. Would the length of time required in kneading depend upon the number and the positions of the arms of the kneaders?

Ans. I think it would.

Cross-int. 17. Assuming that you use the same machine, and the same quality of flour, would you not run at a uniform rate of speed and continue a uniform period of time?

Ans. I would, as near as practicable; but in no case is the process supposed to be precisely the same.

Cross-int. 18. Supposing you were called to make bread with a machine of a different size and arrangement from any with which you are familiar, how would you determine the rate of speed and the length of time necessary.

Ans. I should make my calculations from my past experience.

Cross-int. 19. Could you not determine both those questions by experiment?

Ans. I should use my past experiments for a standard. If
423 I did not succeed I should experiment still further.

Cross-int. 20. Does not success in baking bread depend somewhat upon the am't of gaseous pressure to which the dough is exposed?

Ans. It does; but more on the judgment of the operator.

Cross-int. 21. Supposing the other conditions of the work to be the same, should the gaseous pressure be uniform in every case?

Ans. I think it should be, but in all cases it can be kept precisely the same.

Cross-int. 22. How much variation is admissable with safety to the bread?

Ans. I have made good bread with the same brand of flour, using from 100 to 180 lbs. pressure to the square inch.

Cross-int. 23. When the pressure was 180, did you continue kneading as long as when the pressure was only 100?

Ans. Yes, sometimes longer; and the bread was good, but did not have the same appearance.

Cross-int. 24. Does the length of time required in kneading depend at all upon the am't of gaseous pressure?

Ans. It does.

Cross-int. 25. Supposing the gas to be of a uniform temperature, and the other conditions of the work to be uniform, how much variation in the gaseous pressure would be admissable?

424 Ans. None, I think.

Cross-int. 26. When you stated that you had sometimes made good bread with a gaseous pressure of 100, and sometimes with a gaseous pressure of 180, did you refer to cases where the gas was used at the same temperature?

Ans. I did not; those are 2 extremes to which we do not go from choice, but are sometimes compelled to?

Cross-int. 27. Suppose the kneading continues too long what effect is produced upon the bread?

Ans. The effects would be different in most every case, sometimes coarse and porous, sometimes dark in color and of a bad smell.

Cross-int. 28. Is it fit for use?

Ans. I don't think it is, altho' some people use it.

Cross-int. 29. What effect is produced upon bread by kneading it insufficiently?

Ans. It is very heavy and solid: sometimes a sharp crust forms on the top of the loaf in the act of baking.

Cross-int. 30. It it fit for use?

A. I do not consider it unhealthy, altho' it is miserable food.

Cross-int. 31. Have you not gained most of your information as to the way aerated bread is made from your own experiments?

Ans. I have in handling the machinery; have learned many

425 useful things by my own exertion, but never have been a competent workman until I had used Mr. Dake's original ideas combined with the original patent; not having been a competent judge of the appearance of the dough after my process.

Cross-int. 32. What information did you receive from Mr. Dake in regard to making bread?

Ans. He insisted upon having me apply the gas differently, by applying gas as soon as the blade was started and all together as soon as the cap of the kneader was screwed down; the gas should be pumped in gradually as the pressure decreased in the kneader, and the pressure should be kept up until all the dough was drawn off.

Cross-int. 33. Before Mr. Dake gave you this information had you never applied the gas as soon as the blades were started, and altogether as soon as the cap of the kneader was screwed down?

Ans. I had.

Cross-int. 34. Before Mr. Dake gave you this information, had you not pumped in the gas gradually as the pressure decreased in the kneader, and kept up the pressure until all the dough was drawn off?

Ans. I had but not with that accuracy it requires to keep the dough in perfect order.

Cross-int. 35. Was not the accuracy of which you speak
426 attained by your own efforts?

Ans. It was after having been so ordered by Mr. Dake, previously I thought it unnecessary?

Cross-int. 36. When you commenced making aerated bread for Mr. Kendall in December last, did you know that the dough was to be mixed in a close vessel under gaseous pressure, and that carbonic acid gas was the proper gas to use?

Ans. I was told by different parties that that was the process we were to work under, and after doing it myself I knew it to be the case.

Cross-int. 37. Did you, at the same time, know that the dough or paste after being mixed was discharged under gaseous pressure from the vessel in which it was so mixed, so that it could be taken in quantities of the required size directly from the discharge to the oven or other cooking apparatus?

Ans. I did.

Cross-int. 38. Did you, at the same time, understand the construction and uses of Orrin Kendall's aerated bread machinery.

Ans. I did understand the construction but not the practical use of it.

Cross-int. 39. Did you not understand the use for which each part of the machinery was designed, and did you not know how to set the same in motion?

427 I did understand what each part was intended for, and also how to set each part in motion.

Cross-int. 40. Did you not at the same time know that when machinery was in motion, the gasometer should be connected with it, and should contain carbonic acid gas under a high pressure?

Ans. I did not know that, and never knew a man that did know it, for the reason I hever knew the word gasometer applied to any vessel that carries a high pressure.

Cross-int. 41. From what vessel or receptacle was Mr. Kendall's kneader then supplied with gas?

Ans. Hollow castings called reservoirs or receivers.

Cross-int. 42. Is Dake and Goodman's kneader supplied substantially in the same way?

Ans. It is.

Cross-int. 43. Did you not know when you commenced making aerated bread for Mr. Kendall that the kneader, when in motion, should be connected with such receiver or receivers containing carbonic acid gas under a high pressure.

Ans. I did, after having been told so.

Cross-int. 44. By whom?

Ans. I do not remember.

Cross-int. 44. Were you not told so at or before the time you commenced making aerated bread for Mr. Kendall?

Ans. I was.

428 Cross-int. 45. Did you not then know that in working said process you took off the cap from the kneader, and put in

the required quantity of flour, and the salt and water, and then put on the cap, and exhausted the vessel of atmospheric air; then opened the connection with the receiver, that the gas might be forced in under heavy pressure; that you then put the shaft in motion for the purpose of mixing?

Ans. Yes; I knew all those things.

Cross-int. 47. Did you not then know that if you supposed the dough had been sufficiently worked and charged with gas, you had only to open the cock or valve at the discharge pipe, and the pressure inside would then force out some of the dough for inspection?

Ans. I did.

Cross-int. 48. Did you not then know that when dough was sufficiently worked, that you should open the cock or valve of the discharge pipe that the dough would be forced out, and should be cut off in pieces of the required size to form loaves, and immediately put into the oven to bake.

Ans. I did know that if the dough was properly worked, it should be put in the oven and baked, but not having instructions from any person or persons that knew any more or as much as myself, and I knew nothing at all, not even knowing the nature of the carbonic gas or its effect upon flour and water; when mixed under those
429 disadvantages, I could not, and did not, succeed at first in making good bread. I did know that, by removing the cock or valve of the discharge pipe, the dough would be forced out, and should be cut off in pieces of the required size to form leaves, and immediately put into the oven to bake.

Cross-int. 49. Did you not then know that, after it is discharged from the kneader, it should not be handled before it is put in the oven?

Ans. I know the dough should not be handled before it is baked.

Cross-int. 50. When the dough is prepared for baking by this process, does it resemble the ordinary dough, when it is ready for the oven and if not, wherein does it differ?

Ans. It does not usually, but can be made so; when first drawn, it has the appearance of being thinner. If a piece cut be worked by hand a moment in dry flour, it will resemble fermented dough; and I have seen as good bread made within two weeks in this way as I ever have seen in any process of baking.

Cross-int. 51. Would a baker, who understood the old process of making bread, without any experience in making aerated bread, be able to judge from his knowledge of the old process, when the aerated dough was ready for the oven?

430 Ans. I don't pretend to know anything about other people's judgment, but have known old style bakers pronounce dough, after having been drawn from the kneader, and the same, when baked, proved to be good bread.

Cross-int. 52. Had not the old style bakers of whom you speak seen aerated bread made before?

Ans. They have been in the employ of Mr. Kendall, and might have witnessed the process before.

Cross-int. 53. With all the knowledge which you possessed of this process of making bread, when you commenced for Mr. Kendall, why did you fail?

Ans. I had no knowledge of the process of making bread, but what instructions I had received had set me back more than it had helped me. If I had received no instructions and had taken it up alone, I could have accomplished more in the same time.

Cross-int. 54. Were not the things which you have just stated you then knew about this process sufficient, without any other instructions to enable you to make good bread?

Ans. It might have been to any practical baker who understood the nature of flour, but not to a practical engineer.

Cross-int. 55. Were you not at that time a mechanic of considerable skill and experience?

Ans. I have had considerable experience, but don't claim to
431 be a scientific man, nor a man of much skill.

Cross-int. 56. Did not Mr. Kendall, at the time he placed you in charge of the aerated bread machinery, have in his employ practical bakers, who understood the nature of flour?

Ans. He had, but it was supposed that his best bakers were in a different department, and I have heard the most skilful of them say that his practical aerated bread baker was a novice at the business, and knew nothing of either fermented bread or the old style of baking; and I think that his skill displayed on the aerated machine was a proof of their assertions.

Cross-int. 57. How would experience in making bread by the old system assist a man to a knowledge of the temperature of carbonic acid gas, when used in making aerated bread?

Ans. As the same gas is generated from malt yeast or ferments of any description, and as it is not the yeast that raises the bread directly, but the gas that is generated from the yeast is of the same nature or nearly so, it is supposed that a baker will always handle, and his success in baking depends upon the amount of gas generated from the yeast or foments, is able to judge something about what effect
the gas will have on dough or paste, when closed in an air-
432 tight vessel.

Cross-int. 58. Who gave you the instructions which you say misled you?

Ans. I think I was misled by following the suggestion of all who pretended to know about the business, including an engineer whose name I do not remember; Cornelius Kendall, John Weeks, an old operator of Mr. Kendall, who was very unsuccessful and my own inexperience.

Cross-int. 59. What suggestions did the engineer make to you, which misled you?

Ans. He explained to me the process, under which they manufactured aerated bread in Milwaukee. I was misled in using his quantity of water. I found by experiment that from 10 to 15 lbs. less water was better in all cases. I was also misled by his process of making and purifying gas. In his direction for generating gas, I used nearly double the amount of water in purifying, and then I found that my gas was none too pure.

Cross-int. 60. If he had not suggested to you the amount of water to be used, how would you have ascertained the am't?

Ans. By experiment the same as I finally did.

Cross-int. 61. What suggestions did Weeks make to you which misled you?

Ans. It was not so much his suggestions as his practical
433 operations which I witnessed myself.

Cross-int. 62. How many revolutions of the kneader did he make in a minute?

Ans. I do not remember so much about his revolutions or speed, but know that he used 190 lbs. water on one barrel of flour, and I have found by experiment that the same brand of flour required only 136 pounds of water to make a beautiful loaf.

Cross-int. 63. What other error was there in the process of Weeks which you witnessed?

Ans. He did not seem to know or understand when the dough was properly prepared. I don't think that he knew how to bake it after it was prepared.

Cross int. 64. Did you perceive his ignorance in these respects at the time?

Ans. I did not until after I had become more accustomed to the work myself.

Cross-int. 65. Did you when you saw him engaged in this process consider him a competent workman in the business?

Ans. I thought him not to be, and intimated as much to Mr. Kendall. Mr. Kendall's reply was that he came well recommended and he would give him a trial.

Cross-int. 66. Were you not put into his place because of his incompetency?

434 Ans. I cannot say, but know that Mr. Weeks was discharged before I came in.

Cross-int. 67. Did not Cornelius Kendall tell you at the time you commenced to make 40 revolutions in a minute with the shaft in the kneader, and to continue kneading 20 minutes?

Ans. I don't remember of his ever having directed me so.

Cross-int. 68. Did you not, about the time you commenced, read over with Cornelius Kendall a paper which contained such directions?

Ans. I distinctly remember of referring to a paper that I brought from Milwaukee with Cornelius Kendall, on several occasions, but I do not remember the exact purport of that paper sufficient to say they were the very directions that, in part, caused our failure. I can't remember whether they contained the directions above named.

Cross-int. 69. Did the paper you brought from Milwaukee contain the instructions by which the Milwaukee bakery was run?

Ans. They were instructions given by the engineer of that bakery, which I have reason to think were intended by him to deceive.

Cross-int. 70. What did they contain?

Ans. The am't of water I do not exactly remember; the am't of gas and the am't of mixing, as near as my memory serves me,

and also this process of manufacturing gas, was there copied.

435 Cross-int. 71. How do you know, or why do you suppose that he intended to deceive?

Ans. I do not know; but from what I have since heard—he took me to be an impostor, and has himself stated that if his employer, Mr. Follansbee, had known my business there, he would have booted me out of his shop.

Cross-int. 73. Did you not, about the time you commenced making aerated bread for Mr. Kendall, read over with Cornelius any other paper than the one you have named, containing directions as to the process?

Ans. Yes.

Cross-int. 73. What paper?

Ans. They were instructions given by Mr. Copeland from Detroit, but never referred to until after we had been successful, and then not as a matter of importance.

Cross-int. 74. Did you not, at about the time you commenced making aerated bread, read over with Cornelius Kendall, in his father's office, the written instructions of John Pendleton for making aerated bread?

Ans. Not to my remembrance; and not until within, I think, abou 3 weeks of my leaving Mr. Kendall did I know that there was such an article until then.

436 Cross-int. 75. Did you not, about the time you commenced making aerated bread for Orin Kendall, read over in his father's office, with Cornelius Kendall, other written instructions for making bread than those you have named?

Ans. I don't remember of ever having done so.

Cross-int. 76. Did you ever, at the request of Orin Kendall, call on his attorney, John Woodbridge, jr., at his office in this city for the purpose of giving him information about the process for making aerated bread? If so, when?

Ans. I never went there for that purpose; altho' some description was given of it while I was there. I cannot remember dates, but it but was a short time previous to my leaving Mr. Kendall.

Cross-int. 77. Did you then tell Mr. Woodbridge how many revolutions should be made by the shaft in the kneader? If so, state.

Ans. I told him that was, in my opinion, at that particular time, right. I have changed my system so many different ways and so many different times that I do not now remember what I then told him, but know that it was as I was running then.

Cross-int. 78. Did you not tell him at that time that it was necessary to make at least 70 revolutions per minute?

Ans. I think I did, but have since discovered that it is not a matter of importance whether the speed runs 50, 70, 90, or even 100.

437 Cross-int. 79. What did you then tell Mr. Woodbridge as to the length of time required in kneading?

Ans. I do not remember precisely, but know that it was precisely as we were kneading at that time.

Cross-int. 80. Did you you not then tell him that about 2 minutes was required in kneading?

Ans. I do not exactly remember; but I think we were kneading from 2 to 3 minutes at that time.

Cross-int. 81. Did Mr. Woodbridge call your attention to any written directions for making bread at that time?

Ans. I think he did; and those were the written directions of Mr. Pendleton which I had seen in Mr. Kendall's office but a short time before, or a short time after calling at the office of Woodbridge & Grant.

Cross-int. 82. What did you say to Mr. Woodbridge about the process contained in said written instructions?

Ans. I do not remember; but thought at that time that they were useless, on account of their being so much different from what I had been working under.

Cross-int. 83. Did you not tell Mr. Woodbridge on that occasion that you had tried to make bread in the manner named in said written instructions, and that good bread could not be made in that way?

Ans. I don't exactly remember; but if I had been under oath, and had sworn to that effect, I should have perjured myself, for
438 I have never, until within one month, known the exact purport of that paper.

The further taking of these depositions was then continued to September 2, 1865, at 10 a. m.

SEPT. 2, 1865, 10 *a. m.*

Parties present by their counsel, and the examination proceeded as follows:

Cross-int. 84. Is it no your best recollection that you told Mr. Woodbridge so?

Ans. It is in consequence of having been misled by statements of Cornelius Kendall in regard to these directions, not having seen them myself previous to that statement, I supposed we had been working under Mr. Pendleton's directions, as it was so stated by Cornelius Kendall.

Cross-int. 85. Then you did say to Mr. Woodbridge that you had tried Pendleton's directions, and that they had proved a failure.

Ans. I think I did; but have since ascertained that that statement was not true, on account of myself having been misinformed.

Cross-int. 86. Did not Mr. Woodbridge on that occasion call your attention to that part of Mr. Pendleton's directions requiring kneading to continue about 20 minutes, and the motion to be about 40 revolutions a minute?

Ans. I think he did.

Cross-int. 87. What did you say about the directions in those particulars.

439 Ans. I think I told him that it was not speed enough, and I have since ascertained that I was a competent judge whether it should be more or less speed at that time.

Cross-int. 88. Did you not tell that you had tried that speed, and had likewise tried kneading that length of time, and had found that good bread could not be made in that way, or words to that effect?

Ans. I think I did; but at the same time I did not tell him that the fault or the cause of the failure was in not preparing the paste properly, instead of the fault of the speed.

Cross-int. 89. Did you tell Mr. Woodbridge on that occasion that the fault, or the cause of the failure, was in not preparing the paste properly, instead of the fault of the speed?

(Question withdrawn.)

Cross-int. 90. Did you not tell Mr. Woodbridge on that occasion, that on finding that rate of speed insufficient, you had gradually increased it until you had run it up to about 70, and had decreased the length of time employed in kneading to 2 or 3 minutes, when you found that you made good bread?

Ans. I did; I have since found that that experiment was neither profitable to my employer nor reasonable to the operator.

Cross-int. 91. When did you settle upon 70 as the proper rate of speed, and 2 or 3 minutes as the proper length of time to be employed in kneading?

440 Ans. I think some time in January.

Cross-int. 92. Did you continue to make bread in that way, or to the time of your interview with Mr. Woodbridge?

Ans. I did.

Cross-int. 93. What was the quality of the bread which you made in that way?

Ans. Generally good; occasionally poor.

Cross-int. 94. How much money did you tell Mr. Woodbridge on that occasion Mr. Kendall had lost on flour by failure in making aerated bread?

(Objected to.)

Ans. I don't remember of ever having mentioned, or heard mentioned, anything about the loss on flour on that occasion.

Cross-int. 95. Did you not on that occasion estimate Mr. Kendall's loss on flour at about $500, or more than $500?

Ans. I do now remember of hearing Mr. Kendall say on that occasion that his losses would amount to about $500, but I do not remember of ever having made an estimate myself, and supposed at the that time Mr. Kendall included all his losses in the $500.

Cross-int. 96. Do you not remember that after you estimated the losses on flour at about $500, that Mr. Kendall said his outlay and losses amounted to over $4,000?

Ans. No, I do not remember; I doubt very much all such estimates.

441 Cross-int. 97. Will your swear that on that occasion you did not estimate Mr. Kendall's losses on flour alone at about $500?

Ans. No, I will not swear it; but cannot remember of ever having made an estimate of his his losses on either flour or machinery.

Cross-int. 98. What point in the directions of Pendleton did you not understand at that time?

Ans. I did not understand any point so well but what I might be liable to carry any or all points to extremes.

Cross-int. 99. Did you not know that those directions set forth, that it was best to use 2 kinds of flour—say 1st and 2nd quality?

Ans. Not having seen the directions, nor having heard any person say whether it were best or not, I consequently knew nothing about it.

Cross-int. 100. Had you never tried the use of 2 kinds of flour—say the 1st and 2nd qualities?

Ans. No; not at the same time.

Cross-int. 101. Is any advantage to be gained from the use of 2 kinds of flour?

Ans. Yes; great advantages.

Cross-int. 102. Specify them.

Ans. In the first place, the 2nd quality is supposed to be cheaper flour, and will make equally as many loaves, and equally
442 as good when mixed with 1st. quality. In the second place, the 1st and 2nd quality when neutralized, will make a finer cutting loaf for family use.

Cross-int. 103. Have you for the last 4 weeks constantly used 2 kinds in every baking?

Ans. I have, with few exceptions.

Cross-int. 104. Have you uniformly used the 1st and 2nd quality in every baking?

Ans. I answer the same as before; it is the same question.

Cross-int. 105. How many different qualities of flour are there?

Ans. Two.

Cross-int. 106. Are there only two different qualities of flour?

Ans. Not that I recognize; good and bad.

Cross-int. 107. Then you think that better bread can be made from an admixture of good and bad flour than can be made from good flour alone?

Ans. No, I do not; I do not use a bad article but a first and second quality of a good article.

Cross-int. 108. How many articles are there of a good article?

Ans. I don't know how many different mills there are running a good article.

Cross-int. 109. Are there not more than 2 qualities of every variety of good flour of which you know?

Ans. I am not a flour merchant, but consider all flour that is sweet, sound, and white, a good article, and I use none else.

443 Cross-int. 110. What do you mean, then, when you say that you use two qualities of flour in making bread?

Ans. I mean that I use both spring and winter wheat flour, and both good articles.

Cross-int. 111. Is spring wheat flour always graded as second quality?

Ans. It is so considered by bakers under my instructions.

Cross-int. 112. Do you not understand by the 1st quality of flour, the best flour in the market?

Ans. In speaking of it, I should use the term best flour in the market.

Cross-int. 113. At the interview of which you have spoken with Mr. Woodbridge, were not Pendleton's directions read over by you, or in your hearing?

Ans. I think not; but were handed to me by some one present, and then I merely glanced at them, but did not take pains to read them carefully thinking that I knew it all.

Cross-int. 114. Did you not comment upon various items of those directions?

Ans. I might have done so, but don't remember.

Cross-int. 115. Did you not say, in reference to the am't of salt therein required, that that was immaterial as to the general quality of the bread; that it was a mere question of seasoning?

444 Ans. I think I told Mr. Woodbridge that in my own process of baking I tried to salt or season the bread to suit the taste of the customers.

Cross-int. 116. Did you not make that statement after observing the item in the directions about salt?

Ans. I don't remember of having noticed an item about the directions of salt in the article referred to.

Cross-int. 117. When you observed the item in the directions requiring gaseous pressure anywhere between 90 and 150 lbs., did you not say to Mr. Woodbridge that the pressure should never be less than 100 lbs., and you had run it up as high as 180?

Ans. I do not remember of ever having observed an item in those directions referring or specifying any certain number of lbs. of gas to be used until within about 1 month.

Cross-int. 118. What did you say to Mr. Woodbridge about the am't of gaseous pressure required.

Ans. (Objected to.)

" I think I told him the am't I was accustomed to use myself; but at that time I did not positively know the am't required under those directions.

Cross-int. 119. Did you not then discuss with Mr. Woodbridge the propriety of those directions as to the quantity of water required by them?

(Objected to.)

Ans. We did discuss many things about areated bread, but

445 do not remember very distinctly about the am't of water.

Cross-int. 120. When did Cornelius make the statements to you about Pendleton's directions, which you say misled you?

Ans. Often during the first few days that we were together in our first experiments, when he had the entire charge and responsibility; when answering my questions in regard to the mixture, he would inform me that it must be all right because it was under Pendleton's directions, which I have since found out would have been correct, if he had not carried them to extremes.

Cross-int. 121. Did he tell you that Pendleton recommended the use of two kinds of flour—1st and 2nd quality?

Ans. I do not remember of his ever having done so.

Cross-it. 122. Did he tell you that Pendleton made any recommendation of the quality of flour to be used? If so, what?

Ans. I don't remember of his ever having done so.

Cross-int. 123. Did Cornelius at that time use 2 kinds of flour?

Ans. He did not at the same time.

Cross-int. 124. Is the quantity of water to be used the same with every kind of flour, or does it vary?

Ans. It varies.

Cross-int. 125. From how many ounces to the lb. to how many does this variation extend?

446 Ans. In Mr. Pendleton's directions he says from 8 to 13 ounces of water to the lb. of flour. I do not think there is as much variation as that; I think from 8 to 10 or 12 would be a nearer average of the variation.

Cross-int. 126. Did Cornelius tell you how much water was required by Pendleton's instructions? If so, state?

Ans. I do not remember.

Cros-int. 127. Did Cornelius in making the bread use from 8 to 13 ounces to the lb. of flour?

Ans. I do not not know the exact number of ounces or lbs., but know that he went to great extremes, and could not say whether he was in that range or not.

Cross-int. 128. Which did he put into the kneader first, the water or the flour?

Ans. The water.

Cross-int. 129. Did he tell you that that was according to Pendleton's directions?

Ans. He might not have told me that one particular thing, but conveyed the idea that he was working generally under Pendleton's directions.

Cross-int. 130. After he closed the cover of the kneader did he admit the gas?

Ans. Not until after he had pumped off the atmospheric air.

Cross-int. 131. Supposing you admitted the gas before pumping off the atmospheric air, what would be the result?

447 Ans. In some cases the bread would be very porous, and full of large air-holes; but I have made as good bread without creating a vacuum as I ever have made any other way.

Cross-int. 132. Do you not usually pump out the atmospheric air before admitting the gas?

Ans. I do invariably, unless by accident the gas is admitted before the vacuum is obtained. I was told by Mr. Alvord, of St. Louis, that in his process of making aerated bread, that he never pretended to create a vacuum in his kneader before admitting the gas, which I think was the cause of his failure.

Cross-int. 133. While Cornileus was raising the pressure in the kneader, did he set the arms in motion to mix?

Ans. I did.

Cross-int. 134. Did he tell you that that was in accordance with Pendleton's directions?

Ans. He conveyed that idea.

Cross-int. 135. Did he continue kneading about 20 minutes?

Ans. I think his time varied from 10 to 30 minutes.

Cross-int. 136. Did he in either of his processes continue kneading about 20 minutes; with about 40 revolutions per minute?

Ans. I did not refer to any time-piece, and could not say.

Cross-int. 137. Why did you about that time try the effect of kneading 20 minutes, and of making 40 revolutions per minute?

Ans. I do not recollect of ever having tried to do so, but might have done so many a time in my different experiments.

Cross-int. 138. Why did you then, at your said interview
448 with Mr. Woodbridge, tell him that you had made a trial that way and had failed?

Ans. I do not think that I ever told Mr. Woodbridge any such thing; but instead, told him that I had run under Pendleton's directions and had failed, supposing that when I had run under Cornilius Kendall's instruction I was also under Pendleton's instructions.

Cross-int. 139. Were you not told, at about the time you commenced making the aerated bread, that the kneading should continue about 20 minutes, at the rate of about 40 revolutions per minute?

Ans. I might have been told that a dozen times, but so much has been told me, I do not remember now of ever having been told once.

Cross-int. 140. Did not Cornelius Kendall cause the pans, with the dough to be placed in the oven as early as possible after kneading?

Ans. I do not know whether he was the cause of their being put in the oven, or whether it was generally understood by the workmen, that it should be so; suffice it to say, that it was done so.

Cross-int. 141. Did not Cornelius Kendall make use of a pressure of gas in the kneader, ranging from 90 to 150 lbs.?

Ans. I think he did, or rather from 1 lb. to 180 lbs.

Cross-int. 142. Did he not represent to you that Pendleton's instructions required a pressure from 90 to 150 lbs?

449 Ans. I think he did; but not knowing how to use it himself, after it was applied, he could not instruct me.

Cross-int. 143. How did he make his carbonic acid gas?

Ans. His material was composed of oil of vitriol, or acid, marble dust, and water. I do not remember the proportions in which it was used generally, but the one mixture was 3 gallons of oil of vitriol, 6 gallons of marble dust, and 9 gallons of water.

Cross-int. 144. Did you not at one time use a mixture of 1 part of acid, 2 of marble dust, and 4 of water.

Ans. I think we did, and I came to the conclusion that there was too much water.

Cross-int. 145. Is that your present opinion?

Ans. It is.

Cross-int. 146. How do you make your gas at present?

Ans. By using 3 gallons of vitriol, 7 gallons of dust, and 30 quarts of water.

Cross-int. 147. Please specify what Cornelius told you were Pendleton's directions?

Ans. I cannot do it accurately.

Cross-int. 148. Specify what he told you were contained in Pendleton's directions, which turned out not to be there.

Ans. I cannot do it for the reason that all we baked for several days was baked under some different process, and I supposed that it was all under Pendleton's directions, from the remarks made from time to time by Cornelius Kendall, and I do not remember any one particular process.

450

Cross-int. 149. Did you not understand at that time, that Pendleton's directions were definite?

Ans. I did not know what the directions were, neither did I know positively that there were any directions at all, but supposed if there were, they were definite.

Cross-int. 150. When did you first suppose, that you knew what Pendleton's directions were.

Ans. Sometime in the middle of December, 1864, I thought I understood perfectly well what was expected and required of the machine, but was unable to operate successfully, and I thought, at the same time, that Mr. Pendleton's directions should be carried out in the operation on the machine.

Cross-int. 151. Specify what you then supposed was contained in Pendleton's directions?

Ans. I then supposed that Mr. Pendleton's directions required as much water and no more than the flour would bear. I also supposed that it should be thoroughly mixed before a vacuum was created in the kneader, and that a sufficient quantity of gas should be admitted to raise the dough to a light spongy substance, but was unable to tell when the dough was properly mixed, or a sufficient quantity of gas had been admitted, and was also unable to tell when the whole together had been agitated or mixed enough. I

451

I supposed there were other items, but did'nt know what they were.

Cross-int. 152. Specify a single point in Pendleton's instructions about which Cornelius deceived you?

Ans. In quantity of water; and at the same time I do not think that he did know himself what quantity to use?

Cross-int. 153. How much water did he say Pendleton directed?

Ans. I have heard him say, but do not remember.

Cross-int. 154. Specify another point in Pendleton's directions wherein Cornelius deceived.

Ans. The quantity of gas used by me was ordered by Cornelius Kendall, which did not prove right, and I supposed, as usual, it was Pendleton's directions, but cannot say positively whether it was or not.

Cross-int. 155. Specify another point in Pendleton's directions about which Cornileus deceived you?

Ans. The am't of mixing, which I think was entirely wrong, was ordered by Cornelius Kendall, or sanctioned by him, which I also supposed was Pendleton's directions.

Cross-int. 156. What did he say about the am't of mixing?

Ans. I do not remember his exact words, but he would give the order to stop mixing when he thought proper, and I supposed that it was all under the directions or Pendleton.

Cross-int. 157. How long had the mixing proceeded, when he would give the order to stop?

452 Ans. Not having referred to the time-piece, I could not say; and also think that Cornelius Kendall did not know the exact time the mixture was running.

Cross-int. 158. Specify another point in Pendleton's directions about which Cornelius deceived you.

Ans. There are no other substantial points that he could have deceived me upon.

Cross-int. 159. Examine the paper now shown you, and state whether you ever saw it before. and annex the same as an exhibit to your deposition.

Ans. I have never seen this document before. but think I once saw a copy from it, first in the office of Woodbridge & Grant, and shortly after the same copy in O. Kendall's office, and I request the same to be annexed to my deposition, and marked Exhibit "B."

(Notary marks the said paper Exhibit "B," accordingly, and attaches same hereto, as an exhibit.)

Cross-int. 160. Do you not remember that about the time you and Cornelius commenced making aerated bread for Mr. Kendall, you and he went into the office of Mr. Kendall, and he took out of the safe two copies of directions for making aerated bread, and handed you one, and read the other while you looked over the copy which he handed you; and was not Orin Kendall present at that time?

Ans. I do not; neither do I believe such to be the facts; but I do remember of going to the office in company with Cornelius Kendall on several occasions, and referring to the directions that I

453 brought from Milwaukee; also a pamphlet on aerated bread, that was procured by Cornelius Kendall.

Cross-int. 161. Will you swear that you did not at the time last named, or about the time you commenced making aerated bread for Mr. Kendall, go into the office of the latter and in his presence read over with Cornelius, or hear Cornelius read while you looked over, directions for making aerated bread, you holding 1 copy of the directions and Cornelius the other?

Ans. I will swear that I do not remember of any such transactions, and that I do not believe such transaction ever occurred.

Cross-int. 162. Were you not in the habit in those days, when perplexed, of going to the office to examine papers there for information about the bread?

Ans. I was.

Cross-int. 163. Did you know or suppose that there were any written directions of Pendleton in existence at that time and in the possession of Cornelius or Orrin Kendall?

Ans. I did not know, but supposed the directions had been given verbally.

Cross-int. 164. Did not Cornelius tell you they were in writing?

Ans. I dont remember of his having told me so; and think he did not.

Cross-int. 165. When you and Cornelius went to the office for

information did he never propose to show you Pendleton's
454 directions?

I don't remember that he ever did.

Cross-int. 166. Were you not very particular when you undertook the business to run the kneader at a certain rate of speed, and for a certain time.

Ans. I was'nt very particular about the rate of speed; not knowing the amount of time that was required I could not be particular.

Cross-int. 167. What rate of speed did you first adopt?

Ans. I tried to adopt 40 revolutions to minute; but on account of the misconstruction of the machinery and the bad condition of the engine we were sure of no certain number of revolutions.

Cross-int. 168. Did you not observe accurately the time occupied in kneading?

Ans. I did not at first.

Cross-int. 169. How soon did you begin to observe the time occupied in kneading?

Ans. Within a few weeks after my first attempt and as soon as I had discovered that it was necessary to give it a certain am't of mixing.

Cross-int. 170. What definite time for kneading did you first adopt?

Ans. My first definite time after I had applied the gas, varied from 2 to 5 minutes, but the whole process of mixing from the time the machine first started until it was stopped would vary from
455 10 to 25 minutes.

Cross-int. 171. Was not the first definite you fixed upon 20 minutes?

Ans. I never have had any definite time to do the mixing, that is required to be done in the whole process.

Cross-int. 172. Did you not first fix upon 20 minutes as the proper time in which the arms should be kept in motion?

Ans. I don't remember of having done so.

Cross-int. 173. Did you not tell Mr. Woodbridge at your said interview with him that you had tried kneading 20 minutes, and that it had proved a failure, and explain to him that it made the dough too light; that it sunk down in the pans.

Ans. I think that is the fact; but at the same time I did not think to explain to him that that particular 20 minutes of mixing was done after the gas had been admitted, and it must have been in the process of kneading nearly 40 minutes both before and after the gas had been admitted, which in my opinion was the cause of the failure.

Cross-int. 174. Was not your remark to Mr. Woodbridge called out by his referring you to the clause in Pendleton's instructions, requiring the kneading to continue 20 minutes and by his asking you if that was right?

Ans. I do not remember such to be the fact.

456 Cross-int. 175. May it not have been?

Ans. It might have been, but I do not think it was.

Cross-int. 176. When Mr. Woodbridge called your attention to

that clause in Pendleton's instructions, did you then believe the instructions to be right in that particular?

Ans. I do not think, or I do not remember of his calling my attention particularly to that part of the instructions; and I am sure that I did not understand thoroughly the instructions, and more particularly that part which he refers to.

Cross-int. 177. During the month of last March, how long did you keep the arms of the kneader in motion continuously?

Ans. I think they would vary from 15 to 25 minutes.

Cross-int. 178. During last March, how long did you continue kneading continuously?

Ans. I think they would vary from 15 to 25 minutes.

Cross-int. 179. Did you continue kneading for that length of time, as long as you remained with Mr. Kendall?

Ans. I think I did after I had become successful.

Cross-int. 180. What length of time do you now employ in kneading for Dake & Woodman?

Ans. I think we vary from 15 to 25 minutes.

Cross-int. 181. What number of revolutions per minute do you now give to the arms of the kneader?

Ans. We vary from 30 to 80 revolutions, depending upon the strength of the dough, and the am't of steam applied to the engine, and make good bread anywhere between those extremes.

457 Cross-int. 182. At what temperature do you use your gas?

Ans. I do not know the exact temperature, but always keep our gas cool as possible.

Cross-int. 183. How many ounces of water do you now use to the lb., of flour?

Ans. I could not tell, for the reason that I do not go by pounds and ounces, but judge by the size of the dough.

Cross-int. 184. With how many revolutions of the arms do you do your kneading, supposing the gas to be of the same temperature in each case?

Ans. From 150 to 800, depending wholly on the stiffness of the dough, and quality of the flour.

Cross-int. 185. Have you had uniform success in bread making for the four weeks?

Ans. I have not; for in consequence of having to contend with hot gas and inexperienced workmen, I have made several bad batches of bread.

Cross-int. 186. How does you success for the last four weeks compare with your success immediately before that time?

Ans. The bread is considered better, and our trade has increased, and the boss has made more money.

Cross-int. 187. Did you have more failures immediately preceding the last four weeks or fewer than you have had since?

Ans. We had more bad luck before than we have now. I consider our process now a sure one, if any ordinary am't of judgment is exercised in the operation.

458 Cross-int. 188. What is the greatest am't of bread that has proved bad in any 24 hours, within the last four weeks?

Ans. We have baked none but what has sold readily; but there were two batches on one day this week which our workmen pronounced no better than Kendall's bread.

Cross-int. 189. What amount of flour has been spoiled in kneading, or in process of working, during the last four weeks?

Ans. To my knowledge there has been none damaged in the process of working so much but what is was sold in less than twelve hours after it was baked; but in consequence of having been deceived by a miserable brand of flour, we have made two batches of very bad bread.

Cross-int 190. Did you apply Mr. Dakes improvement to those two bad bakings of flour?

Ans. I did; and after I had ascertained what I had to contend with, I then applied what Mr. Kendall claims as his improvement, and what I claim as my own improvement, and I ascertained that there was no improvement that would make rotton flour sweet.

Cross-int. 191. What fact or process have you learned from the specifications attached to the patent that you did not know when you commenced making bread for Mr. Kendall?

Ans. I know now that the process here described is right. But I did not know when working for Mr. Kendall how far to extend the process.

459 The further taking of these depositions was by mutual agreement continued to Monday, Sept. 5, 1865, 10 a. m., with the same effect as if they had been continued to the 4th.

SEPT. 5, 1865, 10 *a. m.*

Parties present and examination proceeded as follows:

Cross-int. 192. Specify some particular thing which you have learned from the specifications attached to the patent which you did not know when you commenced making bread for Orin Kendall.

Ans. I knew that about 20 minutes kneading with proper speed will make good bread when all other items in the specifications of the patent are properly applied.

Cross-int. 193. What is there in the specifications attached to the patent about kneading 20 minutes?

Ans. I think the specifications say or it is understood by Mr. Pendleton that the kneader sho'd run about 20 minutes.

Cross-int. 194. Do the specifications attached to the patent say that the kneader sho'd run about 20 minutes?

Ans. I think it does, or should be regulated by the judgment of the operator, and I think that the operator will find that about 20 minutes is about the right time.

Cross-int. 195. Don't you know that the specifications say nothing about 20 minutes?

460 I do not remember of its specifying any particular number of minutes, but it gives an operator some idea how to use his judgment.

Cross-int. 196. What other thing here you learned from inspection

of the specifications that you did not know when you commenced making bread for Mr. Kendall?

Ans. I have learned that there should be an expansion of the dough when relieved from the pressure by means of the stop cock below.

Cross-int. 197. Do the specifications say anything about the expansion of the dough when it is relieved from pressure by means of the stop cock below?

Ans. It might not precisely in those words, but it means substantially the same.

Cross-int. 198. Did you not learn substantially the same fact by means of your observation while working for Mr. Kendall?

Ans. I did not until after I had been some time operating.

Cross-int. 199. Did you not while working for Mr. Kendall?

Ans. I did; but did not know whether it was a freak of the gas, or the nature of the flour; whether it was right or wrong.

Cross-int. 200. What else have you learned from the specifications attached to the patent which you did not know while working for Mr. Kendall?

I have learned from Mr. Pendleton's directions which is substantially, but more explicit than those of the original patent, how to make good bread.

Cross-int. 201. Did you understand me in the last interrogatory to ask you what you had learned from Mr. Pendleton's directions?

461 Ans. No; but I did understand that you wished to know what I had learned from the original patent, and I have told you what I have learned from that original patent through the means or assistance of referring to the specifications or directions of Mr. Pendleton.

Cross-int. 202. What other fact or principle than those you have named, have you learned from the specifications attached to the patent, without the assistance of Pendleton's directions?

Ans. I have learned none in particular.

Cross-int. 203. Do not your employees find a difficulty in selling the bread which you are at present making?

Ans. No; but on the contrary we find it difficult some times to manufacture all that we require to supply the demand.

Cross-int. 204. What had been said or done which induced Mr. Kendall to ask you to take an oath that you would not leave him?

Ans. I think it had been said that Messrs. Dake & Woodman had bought or were about to buy the patent, and he wished to retain my services to prevent me from going into the employ of the parties above-named.

Cross-int. 205. Who told Mr. Kendall that Dake & Woodman had bought or were about to buy the patent?

Ans. I think he was first informed by note or letter from Mr. Woodman.

Cross-int. 206. Did the interview at which Mr. Kendall
462 asked you to take the oath occur immediately after he received the note from Woodman?

Ans. It did I think on the same morning.

Cross-int. 207. Did he tell you on that occasion that he had received the note?

Ans. I think he did.

Cross-int. 208. What did you say to him when he told you?

Ans. I cannot remember the words, but think I expressed and know that I felt a feeling of sympathy for him in his trouble.

Cross-int. 209. Did you express to him the surprise which you felt on hearing of Woodman's note?

Ans. I do not remember of expressing any feeling of surprise.

Cross-int. 210. Why did you not feel and express surprise on hearing of Woodman's note?

Ans. Becanse I could not express what I did not feel.

Cross-int. 211. Were you not surprised? and if not, why not?

Ans. Knowing Mr. Kendall to have the reputation of being a very slack business man, none of his business transactions would have surprised me.

Cross-int. 212. Had you received any hint of Woodman's proposed purchase before?

Ans. No, not until after Messrs. Dake & Woodman had purchased the right and previous to Mr. Kendall's knowledge of it.

Cross-int. 213. How long before your said interview with Mr. Kendall had you heard of Dake & Woodman's purchase?

463 Ans. I think 3 or 4 days.

Cross-int 214. Was it just before or just after Woodman returned from Cincinnati?

Ans. I could not say positively, but think it was just after.

Cros-int. 215. Did you see the contract that was made at Cincinnati, if so, who showed it to you?

Ans. I saw a document that I supposed to be a contract, but did not know it contents, not having read it; Mr. Dake showed me a document.

Cross-int. 216. Are you sure that Mr. Dake showed you this contract before Pendleton came here and closed the matter up?

Ans. I am sure that he showed me what was supposed to be the contract before Mr. Pendleton's visit to Chicago, but know nothing of the closing of the matter up.

Cross-int. 217. When you speak of Mr. Pendleton's visit to Chicago, do you refer to the visit which he made just before, or at the time Kendall received the note from Woodman?

Ans. I do.

Cross-int. 218. Are you sure that Dake told you that that was the contract for the patent, or words to that effect?

Ans. I am, or words to that effect.

Cross-int. 219. Did you know that Woodman intended to go to Cincinnati before he went?

Ans. I did not.

Cross-int. 220. How long before this interview at which Dake showed you the contract had you seen him?

Ans. I could not name any particular time; I might have

464 seen him every day, but don't remember of having seen him for more than a month.

Cross-int. 221. Are you sure that you ever talked with him before that time about the patent, or the process for making aerated bread?

Ans. Yes, I am sure that I did invite him to come in to Mr. Kendall's building, previous, I think, to his engagement with Charles L. Woodman; he having once been a baker; I wanted him to see the style; I think he accepted my invitation and stopped into the building about one minute.

Cross-int. 222. At what hour?

Ans. I do not remember, but think it was some time in the forenoon.

Cross-int. 223. What were you doing?

Ans. I think I was about to commence work on the aerated bread.

Cross-int. 224. Did you show him the machinery?

Ans. I tried to, but he was in such a haste, I think he paid but little attention to either my explanation, or the machinery.

Cross-int. 225. What did you say to him about it when you asked him to to call?

Ans. He was in Mr. Kendall's salesroom at the opening between that and my apartment; I saw him, I think, in the act of starting out through, or towards the front door; I cannot remember the
465 precise words, but know that I invited him in.

Cross-int. 226. Did you set the machine in motion while he was there, or was it in motion?

Ans. I think it was not in motion.

Cross-int. 227. Did you tell him that you made the bread by the use of carbonic acid gas?

Ans. I think I did, and showed to him the gas apparatus.

Cross-int. 228. What did he say?

Ans. He asked me who made the gas. I told him the engineer under my instructions; that I think was the last and only question asked by him in regard to the manufacturing bread or gas.

Cross-int. 229. Did he not visit you again before the interview at which he showed you the contract made at Cincinnati?

Ans. He did not visit me; but think I saw him in company with Mr. Kendall or his son but a short time after.

Cross-int. 230. Did you have any conversation with him at the time last named?

Ans. Merely passed the time of day.

Cross-int. 231. Did he ask you any question about the aerated bread, or your success in making it on the occasion last named?

Ans. Don't think he did.

Cross-int. 223. Did you see or converse with him again before the interview at which he showed you the contract?

Ans. I am quite sure that I did not.

Cross-int. 233. Did you receive from him any letter or note?

Ans. I did.

466 Cross-int. 234. Have you that note?

Ans. I have not.

Cross-int. 235. What has become of it?

Ans. I don't remember.

Cross int. 236. What did it contain?

(Objected to.)

Ans. Private matter of my own.

Cross-int. 237. Did it contain any offer that you should go to work for him?

Ans. I am positive that it did not.

Cross-int. 238. Did it refer to any business arrangements between you?

Ans. It did not.

Cross-int. 239. Did it propose any business arrangement between you?

Ans. It did not.

Cross-int. 240. Did make any mention of aerated bread, or the process of making it?

Ans. It did not.

Cross-int. 244. Did it contain any inquiry touching aerated bread, or the process of making it?

Ans. It did not.

Cross-int. 242. Did it contain any inquiry in relation to Mr. Kendall's business, or any mention of the same?

Ans. It did not.

Cross-int. 243. Did it contain a reference to any business matter?

Ans. It did not; but simply a small private matter of my own; which if known would neither injure me nor benefit others.

Cross-int. 244. Did it contain any promise or proposal of help, or advice?

467 Ans. It did not.

Cross-int. 245. Did you receive more than one note from him before the interview at which he showed you the contract?

Ans. I did not; neither have I since.

Cross-int. 246. Did you receive any verbal message from him before the interview last named?

Ans. I never did.

Cross-int. 247. What conversation, if any, did you have with C. L. Woodman about the aerated bread busines, before Dake showed you the contract?

Ans. None at all.

Cross-int. 248. What did Dake say to you when he showed you the contract?

Ans. I think he told me he was going into business, making aerated bread.

Cross-int. 249. What did you say?

Ans. I thought first that he was not in earnest, but when I became convinced, I was very much suprised at Mr. Kendall's negligence in not having secured the patent, and being somewhat vexed, I called him, (Mr. Kendall) a very ungentlemaly name, which I do not think proper to repeat here.

Cross-int. 250. Was Mr. Dake's statement to you your first information about the Cincinnati contract?

Ans. It was.

Cross-int. 251. What was said, if anything, about any business arrangements between you and Dake at that time?

468 Ans. At that time there was nothing said about business.

Cross-int. 252. Did you propose then to go into his employ?

Ans. Not at that time.

Cross-int. 253. Who first introduced the subject of your entering his employ, Dake or you?

Ans. I first made an application for a co-partnership with him.

Cross-int. 254. Was this before or after Mr. Kendall asked you to take the oath?

Ans. I think several weeks after.

Cross-int. 255. Had not Dake before you made this proposal, talked with you about some business arrangement?

Ans. Not previous to that time.

Cross-int. 256. Had he not talked with you about the advantage it would be for you to enter his employ, and held out hopes of preferment?

Ans. No; but on my application warned me against leaving Mr. Kendall dishonorably, but told me if it was my intention to leave Mr. Kendall at all events, that he would see what arrangement he could make about giving me an interest in the business. I afterwards saw him and told him that it was my intention to leave Mr. Kendall at all events, whether I worked for him or some other person. He then told me if such were the facts, that he would give me an

469 interest in the aerated bread business. I then went and saw Mr. Kendall and told him of my intentions and he refused to let me go, on the grounds he said, that it would be means of carrying his business into his enemies hands. I then informed Mr. Dake by letter or note that I could not honorably leave Mr. Kendall's service, and consequently could not become connected in his business in any way, shape or manner.

Cross-int. 257. When Dake showed you the contract, why did you not tell Mr. Kendall?

Ans. Simply because I did not consider myself employed to interfere with any of Mr. Kendall's business arrangements, and knowing, at that time, that I could not help Mr. Kendall by doing so.

Cross-int. 258. Did Dake caution you not to tell Mr. Kendall or any person?

Ans. I do not remember of his having done so.

Cross-int. 259. Did you take the oath which Mr. Kendall requested you to take?

Ans. I told Mr. Kendall that I was not in the habit of doing business that way, but would swear not to leave his services so long as I thought it consistent for me to remain.

Cross-int. 260. Are you sure you put in the qualification, "so long as I thought it consistent for me to remain?"

470 Ans. I am very sure that what I said amounted, in substance, to that much, and as near as I can remember they were the same.

Cross-int. 261. Did you not tell Mr. Kendall, at that time, that he was your best friend, and that you would not leave him, or words to that effect?

Ans. I do not think that I told him anything of the kind; but instead, told him that I considered him a friend, and would stay with him, but did not specify any particular time.

Cross-int. 262. Did you not say to him that he had done more for you than any one else, and that you felt bound to stay with him, or words to that effect?

Ans. I don't remember.

Cross-int. 263. Did you then tell him that you had seen the contract?

Ans. I think not.

Cross-int. 264. What did you say to him about the advantage it would be to you to go with Dake?

Ans. In begging for an honorable discharge, I think I told
471 him that I had been in his employ some 8 years and a half, and that I had most always been owing him a debt of money, and a large debt of gratitude, which I considered still worse; and if I should work for him still longer, I should be in the same condition, and many other things of the sort. I conveyed to him the idea that I could better my condition both financially and physically.

Cross-int. 266. At your said interview with Mr. Woodbridge, did you not tell him that you felt very much hurt that Mr. Kendall supposed you were capable of leaving him, or words to that effect?

(Objected to.)

Ans. I don't remember of having stated to Mr. Woodbridge, or any one else, so foolish an idea.

Cross-int. 267. What did you tell Mr. Woodbridge at that interview about your motive in communicating with Dake & Pendleton & Woodman?

(Objected to.)

Ans. I think on inquiry of either Mr. Woodbridge or Mr. Kendall, I answered that I had been playing the go-between for my own information.

472 Cross-int. 268. Did you not say that you had done so for the purpose of procuring information for Mr. Kendall and assisting him?

(Objected to.)

Ans. I do not remember, and do not believe such to be the case, never having done so.

Cross-int. 269. Are you sure you did not say so?

Ans. I don't remember well enough to swear.

Cross-int. 270. Have you not some little secrets about making aerated bread that you have not revealed on this examination?

Ans. I have none.

Cross-int. 271. Cross-examination closed.

Direct examination recommenced:

Int. 52. Is the shaft in the kneaders of Kendall and of Dake & Woodman upright or horizontal?

Ans. Horizontal in both.

Int. 53. Is the description which you have given in your
473 testimony of the operation of machinery for making aerated bread, did you refer to one with a shaft horizontal, or to one with a shaft perpendicular?

Ans. In my description of the process I did not refer to any particular style of machinery; for, if I understand the patentees' claim, in his right he claims all dough or paste raised or prepared under a gaseous pressure in an air-tight vessel and drawn from stop-cock, is his patent.

Int. 54. Have you any practical knowledge of the operation of the kneader in which the shaft is upright?

Ans. I have not seen it in its practical working, but think it would be all and the same thing in whatever position the shaft might be placed.

Direct examination closed.

Cross-examination recommenced:

Cross-int. 271. Would not the necessary effect of opening a valve in the lower part of your kneader, while the dough was under gaseous pressure, be the discharge of the dough from the kneader?

474 A. Yes. If the valve opened directly from the dough or pressure to the open air.

C. B. AYER.

Sworn to before me this 5th day of September, 1865.

O. R. W. LULL,
Notary Public.

The further taking of the depositions was, by mutual agreement, continued to Monday, Sept. 18, 1865, at 10 o'clock a. m.

O. R. W. LULL,
Notary Public.

SEPTEMBER 18, 1865.

Parties present as before, and these depositions were declared closed before me.

O. R. W. LULL,
Notary Public.

475 *Certificate of notary.*

I, O. R. W. Lull, a notary public in and for the city of Chicago, in Cook county, in the State of Illinois, do hereby certify that the above depositions were taken before me by stipulation of the said parties, through their attorneys, hereto annexed; that the same were commenced as noted, and continued from time to time, as noted, until their close; that the parties, by their respective attorneys, were present at the taking of the same; that the interrogatories and cross-

interrogatories were propounded by the said complainant and defendant, by their said solicitors, and the answers reduced to writing in their presence by the undersigned; that the several witnesses were sworn prior to giving their said depositions to speak the truth, the whole truth, and nothing but the truth in the said matter in issue, so far as they should be interrogated thereto, and that the said
476 interrogatories and the several answers thereto, were read over to said witnesses, respectively, and they were then duly sworn to the truth thereof.

In witness whereof, I have hereunto set my hand and notarial seal this 21st September, A. D. 1865.

[SEAL.] O. R. W. LULL,
Notary Public.

[5-cent rev. stamp.]

Notary's fee, $40, paid by comp't.

O. R. W. LULL, *N. P.*

477 *Exhibit A.'*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

United States Circuit Court, in equity.

JOSEPH M. DAKE
vs.
ORRIN KENDALL.

James A. Bremner, being duly sworn, doth depose and say: That he is selling bread for defendant on commission, likewise cakes and crackers; that about one year ago he began to see the aerated bread made at Milwaukie, in the State of Wisconsin, and from that time until some time last winter ate parts of several loaves of the Milwaukie bread; that the number of loaves, parts of which he ate, would not exceed five; that the loaves of which he ate equalled in taste the bread now made by defendant in his opinion; that last winter he undertook to introduce the bread of the defendant in place of the Milwaukie bread, and compared the bread made by defendant in various places with the Milwaukie bread; the latter was, at this time, the best bread. Afterwards the bread of defendant became
478 at least equal to the Milwaukie bread, and supplanted the Milwaukie bread as far as the defendant has been able to supply the market. About the first of March last, there was a great increase in the manufacture and sale of the bread; and deponent further says, that in his opinion the aerated bread now made by the defendant is the best in the market.

J. A. BREMNER,

Subscribed and sworn to before me this 5th day of June, A. D. 1865.

JNO. WOODBRIDGE, JR.,
Master in Chancery of Cook County.

479 *Exhibit "B."—Directions.*

It is best to use two kinds of flour—say first and second quality.

The quantity of water must depend upon the strength of the flour; it extends from 8 oz. to 13 ozs. to the lb. of flour.

It is best to put in the water, with the salt dissolved in it first, then the flour. After the cover is tightly closed, admit the gas, and and whilst you are raising the pressure on the kneader, set the arms in motion to mix; it should knead in about twenty minutes; motion about 40 evolutions per minute. The pans with the dough should be placed in the oven as early as possible.

The amount of salt used by us is 52 ozs. to the barrel.

The pressure is anywhere between 90 lbs. and 150 lbs.

1 qt. acid
2 " marble dust
4 " water.

480 *Deposition of Jonas Winchester, filed March* 12, 1866, *as follows, to wit:*

Depoiition of Jonas Winchester, taken by consent of parties, to be read in evidence in a cause in chancery pending in the Circuit Court of the United States for the northern district of Illinois, wherein Joseph M. Dake is complainant, and Orrin Kendall is defendant, taken by and for the complainant before me, Samuel L. Harris, a notary public within and for the city and State of New York, at the office of Edmund Hevle, at 206 Broadway, New York, on March 9th, 1866, Geo. M. Lee appearing for complainant, Sam. S. Fisher for defendant.

Jonas Winchester, having been by me first duly sworn, deposeth as follows :

Quest. State your age, residence, and business?

Ans. My age is 55; my residence is New York city; and my business, manufacturing and selling medicinal preparations.

Quest. 2d. State if you have made aerated bread under rights obtained from the patent for making aerated bread, granted by the United States to Perry, Fitzgerald, and Bogert, March 9th,
481 1858; if so, state when and how, and where, and what effect the absence or presence of air in the mixer caused.

Ans. I have made aerated or unfermented bread under this patent of Perry, Fitzgerald & Bogert; this was in the city of San Francisco, Cal., in the year 1862, '63, where I established for a company a large manufactory, with two sets of mixing apparatus, gas or air pumps. My method was to charge the mixer or closed vessel with dough by means of a pump against the pressure of carbonic acid gas introduced, by means of a gas or air pump. On introducing the charge of dough at the commencement, intermixing or inflating it with gas, I was careful to "blow off" through a cock at the top of the mixer all the atmospheric air that might be within, and this was invariably done whenever the mixer was opened for any purpose. It was an indis-

pensable pre-requisite to exclude the atmospheric air in order to have light, sweet, pure bread; as the effect of the air, if not so discharged or exhausted, was chemically to acydize or decompose the flour or dough and entirely destroy it as a fit or healthy article of food. I experimented with atmospheric air in the mixer to satisfy myself of the effects of its presence, and always with the same result,
482 viz: to decompose and destroy the constituent elements of the flour, so as to give the bread a most offensive odor and taste, unfitting it for human food. I give it as my experience in manufacturing bread under the patent aforesaid for over a year, personally supervising every part of the process, that pure carbonic acid gas was, and is, the only agent that can be used for the artificial "raising" or making "light" bread, and that any admixture of atmospheric air deteriorated or spoiled the bread.

Quest. 2. State how much aerated bread you made; what proportion was good and what bad.

Ans. We manufactured an average of one hundred barrels of flour per week, during the twelve months that I was president and superintendant of the company; the bread was uniform in "lightness" and quality, and of the highest possible standard of sweetness and nutrive proportions. We never had "bad" bread, except when purposely admitting atmospheric air instead of the carbonic acid gas. We pumped in this carbonic acid gas to a working pressure of about 175 lbs., at which the dough was drawn out of the desired "lightness."

Quest. 3. State how you mixed this bread.

Ans. At the commencement of operations for the week, and
483 as often as the "mixer" was opened to clear its interior, being about twice a week, our method of proceeding was this: The mixer being empty, the dough was introduced by means of the dough pump, it (the dough) having been previously prepared in an open mixing vessel, and placed in a hopper above the mixture; as the dough filled the mixer from a point near the top, the gas pump was at the same time put in operation, forcing the carbonic acid gas into the mixer, at or near the bottom. An exhaust cock was left open at the highest part of the mixer or opened from time to time, at brief intervals, to discharge or blow off the atmospheric air; and this was continued until every particle of air was expelled or driven out of the mixer, when the exhaust cock was closed, and the process of intermixing the carbonic acid gas with the dough until the requisite degree of "lightness" was effected, when the discharge pipe was opened below, and the dough drawn off by a panful at a time, and each panful transferred to the oven. This process was continued—pumping in the dough, pumping in the gas, and drawing off the dough during the operation of mixing.

Cross-examination of J. Winchester:

484 Cross-examination by S. S. Fisher, counsel for the defendant:

Quest. 1. From whom did you learn the process you have just described?

Ans. From Elisha Fitzgerald, one of the patentees.

Quest. 2. Did he recommend this process in preference to the use of an air pump, or other means for removing the atmospheric air from the "mixer" before the introduction of the carbonic acid gas?

Ans. He invented this mode of pumping in the dough in order to prevent opening the "mixer" so often, and thereby admitting the atmospheric air. The intent was to exclude the atmospheric air more perfectly.

Quest. 3. After the atmospheric air has been once expelled completely, is the exhaust cock again opened during the subsequent introduction of dough and gas, kneading and discharging until the "mixer" is opened for cleaning, say for the next two or three days?

Ans. It was not.

Quest. 4. Describe the operation of mixing the flour or dough prior to its being pumped into the "mixer," containing carbonic acid gas?

Ans. The open "mixer" in which the dough was prepared
485 has a horizontal semi-circular vessel, holding from one to two barrels of flour, through which runs a shaft with arms. The flour was placed in this vessel, with the requisite quantity of water, and kneaded into a homogenous dough by power applied to rotate the shaft in the usual way. When this was thoroughly prepared, it was discharged by a trap door or opening at the bottom with the "hopper," from which it was prepared, into the mixer as before described.

Re-examination:

Quest. 1. Was the air pumped in with dough, or was the air excluded? and if so, to what extent by the gas in the "mixer" when the dough was injected?

Ans. The hopper being kept full of dough, and the dough pump, barrel, and piston being situated at the bottom of and below the hopper, it was not possible for any air whatever to be introduced with the dough into the mixer during the process of [of] "feeding." The exclusion of the atmospheric air was absolute; should the supply of dough in the hopper be reduced so as to allow air to enter the barrel of the pump, the piston would, of course, force it into the mixer. This was the only possibility of the access of air to the interior of the mixer through the dough pump, which could only happen by
486 the grossest negligence on the part of the workmen. In our operations this never occurred, during my superintendence.

JONAS WINCHESTER.

UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, ss:

I, Samuel L. Harris, a notary public, within and for the city and county of New York, do hereby certify that on the 9th day of March, A. D. 1866, the deposition aforesaid, of Jonas Winchester, was by consent of parties taken by me in the above-entitled cause, at the

place above mentioned. Said witness was by me first duly sworn in the above cause, to testify the truth, the whole truth, and nothing but the truth. His deposition was then reduced to writing by me in his presence, and signed by him in my presence. I am not counsel for either party herein, or otherwise interested in the event of this suit.

Witness my hand and seal of office, at New York aforesaid, this 9th day of March, 1866.

[SEAL.] SAMUEL L. HARRIS,
Notary Public, New York Co.

487 And which deposition of Jonas Winchester, is indorsed: Opened for Mr. Goudy, March 12th, 1866.

WM. H. BRADLEY, *Cl'k.*

488 *Deposition of Dwight B. Fuller, filed March* 8, 1866, *as follows, to wit:*

Deposition of a witness taken in a cause pending in the Circuit Court of the United States for the Northern District of Illinois, in chancery, wherein Joseph M. Dake is complainant, and Orrin Kendall is defendant, taken by and for the complainant, to be read in the hearing of said cause, before me Charles F. Walcott, appointed an examiner in said case, at my office, in Boston, Massachusetts, on March 3d, A. D. 1866, by consent of parties; George M. Lee, esq., appearing for the complainant, and Samuel S. Fisher for the defendant.

Dwight B. Fuller, of lawful age, being first duly sworn, as hereinafter certified, deposeth and saith as follows:

Interrogatories by George M. Lee, esq., of counsel for the complainant:

489 Int. 1. State your name, age, residence, and occupation.

Ans. Dwight B. Fuller; fifty years of age; Philadelphia is my residence; am a manufacturer of aerated bread.

Int. 2. Are you acquainted with the patent granted J. Perry, D. Fitzgerald, and H. Bogert, assignees of J. Perry and E. Fitzgerald, by the United States, dated March 9th, 1858, No. 19,610?

Ans. I am.

Int. 3. Do you own rights under said patent? If so, what territory do they cover, and when were they obtained?

Ans. I do; they cover the west half of the State of New York. That right was obtained in 1861; the whole of the State of Pennsylvania, part of New Jersey, all Delaware, and from 14th to 34th street in the city of New York. This last right was obtained in 1864.

Int. 4. Do you manufacture aerated bread under this patent? If so, where, and when did you begin such manufactory, and state
490 the size of each manufactory as to the quantity of bread made?

Ans. I do manufacture bread under this patent; in Buffalo and Rochester, in New York State, and in Philadelphia, Pennsylvania. I

commenced in Buffalo in 1861. We commenced baking about three barrels a day, and bake now from sixteen to twenty barrels a day in summer; in winter not quite so much, at Buffalo. At Rochester I commenced in 1863, baking there about the same number of barrels a day as at Buffalo, and running up at the present time to about twelve barrels per day. At Philadelphia I commenced in September 1865, beginning at one barrel a day, and running up to the present time from twenty to twenty-six barrels per day.

Int. 5. State what kind of bread, as to its quality, you make at Buffalo, Rochester, and Philadelphia, under this patent; if it is better or worse at either place, state it, and how uniform its quality is at those three places?

Ans. Its quality is good and uniform.

491 Int. 6. How much weight of bread per barrel of flour is yielded by this process, and how does it differ in its increase of yield from the old way of baking?

Ans. I get about two hundred and eighty pounds of bread per barrel of flour. I think we get more than by the old way; not being familiar with the old way of baking I have never tested it, but get my information from others.

Int. 7. Do you make any bread in the old way at your establishments?

Ans. I do not.

Int. 8. How is this bread as to quality; that is, are the batches alternately good and bad, and do you have to lose on any of them on account of their bad quality?

Ans. The quality is always good when the machinery is in order. I have had but one bad batch in Philadelphia since I have started there, which was caused by a rat getting into the mixer.

Int. 9. State what kind, and size of mixer you used at these

492 three establishments?

Ans. I use the two barrel mixers at each place; I am now using four in all.

Int. 10. State how you mix or knead this bread, beginning with the ingredients which compose it, and stating how they are mixed?

Ans. We first put salt and water into the mixer, then we sift in the flour; while sifting we put the mixer in motion; when the flour is all in, sifted, we close the mixer, stop it, and exhaust the air; then we pump in carbonic acid gas with a pressure of from fifty to sixty pounds to the square inch, and set the mixer in motion, still pumping in gas, till we get to a pressure of one hundred and fifty to one hundred and sixty pounds to the square inch; we then mix the dough from ten to twelve minutes, then we stop the mixer; at the bottom of the mixer there are two faucets which the dough is drawn through into pans by the pressure then in the mixer. The pan into which the dough passes sits on a scale, and we draw a pan full at a time, weighing about one pound and eleven ounces, and transfer the pan to the oven.

493 Int. 11. What means do you use to exhaust the mixer of its air?

Ans. We use a combination of valves, and the same air-pump and pipe that we do for injecting the gas into the mixer. The valves reverse the action of the pump.

Int. 12. Where is the exhaust pipe for the mixer?

Ans. At the top of the mixer. The same pipe is used also for injecting the gas.

Int. 13. How much care do you take to exhaust the air from the mixer, and how material is this exhaustion to the making good bread?

Ans. We make as near a perfect vacuum as we can get in the mixer; we run our vacuum guage up to twenty-seven; we pump until no air comes out of the exhaust cock of the mixer, so that you can scarcely feel it on your hand; we test it in two ways, both by the guage and application of the hand to the exhaust cock; good bread can't be made without this exhaustion.

Int. 14. State any experience you have had as to the bad
494 effect of air remaining in the mixer upon the bread?

Ans. I have made bread without exhausting, by the advice of Professor Hadley, of Buffalo. The bread so made was unpalateable, and could not be eaten. It had a rank taste and smell, both unlike anything I ever saw before. I tried two batches in that way and then gave it up.

Int. 15. Are you acquainted with Steuben T. Bacon?

Ans. I am. I have known him since 1862—about January of that year.

Int. 16. Did you visit his manufactory of bread, being the establishment of the Boston Aerated Bread Company, before 1864?

Ans. I did.

Int. 17. How did you find the business of baking carried on by him; that is, I desire to know whether his mixing and baking apparatus was kept in good or bad order?

Ans. I considered it in bad order, a good deal of it. It
495 stunk where he kept his gas, or gas meter. The tank or tub in which he kept his gas was full of bilge water, very offensive to the smell. I remarked to him that I couldn't see how it was possible to make good bread with gas kept in such a place.

(This answer is objected to, and the witness is reminded that his remarks to Mr. Bacon, however interesting to himself, are not evidence in this case.)

He said he had consulted a chemist, and the bilge water made no difference with the flavor of his gas.

Int. 18. State if you had any conversation with this Mr. Bacon at Buffalo, New York, about the time he organized this Boston Aerated Bread Company, about an exhaust cock being used upon the Perry & Fitzgerald mixer, and the use of an air pump to exhaust such mixer, and what was said about the use of such pump to exhaust the mixer.

(Question objected to, because it is irrelevant, and because
496 if intended to contradict Mr. Bacon, no proper foundation has been laid for asking it.)

Ans. I had such a conversation with him. I expressed to him the importance which Fitzgerald attached to exhausting the air from the mixer. I think Bacon thought it was better to blow it (the air) off without using the air pump. I had an exhaust pump purposely for exhausting the air at that time, which was attached to the gas pump in the same frame with it, and which was used to exhaust the mixer. Bacon saw the pump, and went all through the building, and examined the machinery. I think he was there nearly the whole day. I gave him all the information I could relating to the manufacture of aerated bread. I explained every piece of machinery in the building, from cellar to garret.

Int. 19. State if the Long Island Bread Company, working under this Perry & Fitzgerald patent, at Brooklyn, New York, before Bacon's company was organized, used an air pump to exhaust their mixer.

497 Ans. They did.

Cross-examination.

Interrogatories by Samuel S. Fisher, esq.:

Cross-int. 1. Do you mean to say that you always made good bread at Buffalo?

Ans. No, sir; at first we did not, at times. When our machinery was in order, we made good bread every time. We had great difficulty with our pumps, both the exhaust and pressure pumps. Couldn't keep them tight. Our exhaust pump we had to throw out entirely, and replaced it with a pressure pump, with a three-way cock, that we used thereafter for exhausting. I got up a plan of packing the pumps, which the government granted me a patent for about that time, which I have used since, and have no difficulty in making the pumps perfectly tight.

Cross-int. 2. Was the defect in your pumps the only reason why you did not make good bread at Buffalo?

498 Ans. That was the only reason that I know of.

Cross-int. 3. Did you always make good bread at Rochester?

Ans. We did, with one or two exceptions; the difficulty was, Johnson, the manager, said, putting too much water in the flour.

Cross-int. 4. Did you not loose money, both at Buffalo and Rochester, in the bread business?

Ans. I did not.

Cross-int. 5. Did you not write to Mr. Bacon, stating that you had lost money, and that his introduction of the English patents would seriously prejudice your business?

Ans. I wrote to Mr. Bacon, I presume, that I lost money in Buffalo, as I did, at first; but I never had any fear of his English patents, and never wrote him any such word. I did write him, that if he had any such great improvements as he professed, I was open to negotiation. I came on to Boston to know what it was, with Mr.

499 Fitzgerald. I went away as wise as I came. He wouldn't tell me a word of what it was. He had, however, written me previous to my coming on, that he had a great improvement, which induced me to come from Buffalo here to Boston. I came to Boston twice on the same errand, with the same result.

Cross-int. 6. Didn't you ask Bacon last night, what he wanted to break down this patent for?

Ans. I asked him what his object was.

Cross-int. 7. What did he reply to that?

Ans. He replied, last night, that he did not want to break it down. When Fitzgerald and I were here together, at Bacon's bakery, he brought on his documents and papers, all that he had here, and more too, showing me the claims and so forth, that would destroy this patent. He then undertook to explain them to me. I said to him, you want me to understand that the Fitzgerald patent ain't worth a cuss.

He said yes, that was so. The whole inference of his conver-
500 sation was, that he would break up the American patent, unless he could make his own arrangements with the owners of it.

Cross-int. 8. What did Mr. Bacon say, from which you drew that "whole inference?"

Ans. He said the American patent wasn't good for anything—that is what he said. He said he was, or had, getting, or got, out the Danglish patent or patents, which would supercede everything else in this country.

Cross-int. 9. Do you mean to say that there is no atmospheric air left in your mixer, after the application of the exhaust pump?

Ans. There may be a very small quantity, but it's trifling, and not enough to effect the bread in the least way.

Cross-int. 10. How many kneading arms have you, both stationary and revolving, in each mixer?

Ans. I think there is nine in all; four stationary, the rest revolve.

501 Cross-int. 11. How rapidly do they revolve?

Ans. We run the revolving knives about forty-five revolutions a minute; the mixer is stationary.

Cross-int. 12. Where did you get that rate of speed from?

Ans. We geared it a little too slow at first. It didn't mix quite fast enough. Then we geared it up to forty-five revolutions. It ran in the first place, thirty-five revolutions a minute, I think.

Cross-int. 13. When, in your answer to the 10th interrogatory, you speak of setting the mixer in motion and stopping it, you mean the kneading arms and not the mixer; do you not?

Ans. I do.

Cross-int. 14. You say, that after the introduction of the carbonic acid gas, when the pressure has reached fifty or sixty pounds, you set the mixer in motion, continuing to introduce the gas. Why do you do this?

502 Ans. Because the gas will not be injected into the dough without a pressure. If we start the mixer, when we first commence pumping gas, it would not mix until a certain pressure is

obtained. We begin at that point merely to save time and to have the dough ready for baking by the time the full pressure required is pumped up.

Cross-int. 15. Where did you get the knowledge of the necessary amount of pressure from?

Ans. I got it from Fitzgerald.

Cross-int. 16. Verbally?

Ans. Yes, I think so.

Cross-int. 17. Do you know anything about the bakery of Church & Foster in New York, whether they had an exhaust pump originally or not?

Ans. I do. They had one.

Cross-int. 18. Were they in the habit of using it?

503 Ans. I think they were. I have never been there when they were baking.

Cross-int. 19. Do you know whether they had a process for kneading dough with atmospheric air?

Ans. I never heard they had. I have been there probably once a month for the last year, and they never said anything to me about it, not a word.

Cross-int. 20. What did you pay for the right for each of the divisions of territory purchased by you under this patent?

Ans. I paid for the west part of New York three thousand dollars in cash. For Pennsylvania and the other territory, I paid about five thousand dollars; perhaps a trifle less.

DWIGHT B. FULLER.

UNITED STATES OF AMERICA,

District of Massachusetts, City of Boston, ss:

504 I, Charles F. Wolcott, appointed an examiner by the Circuit Court of the Northern District of Illinois, to take testimony in the above-entitled cause, do hereby certify that the foregoing deposition of Dwight B. Fuller was taken in said cause by me in the City of Boston, State of Massachusetts, at my office, on March 3rd, A. D. 1866; that the said witness was first duly sworn, and his deposition reduced to writing by me in his presence, and by him signed in my presence, and that I am not counsel or attorney for either of the parties, or otherwise interested in the event of this suit.

Witness my hand officially at the City of Boston aforesaid, this third day of March, A. D. eighteen hundred and sixty-six.

CHARLES F. WOLCOTT,
Examiner.

[5-c stamp.]

Endorsed: "Opened for Mr. Goudy, of counsel, March 8th, 1866.
"WM. H. BRADLEY, *Cl'k.*"

And the defendant read in evidence the following writ:

505 *Defendant's testimony.*

506 1. Certified copy of English patent, to Robinson & Lee, which is as follows, to wit:

507 *Cert. copy of English Patent to Robinson & Lee.*

THE U. STATES PATENT OFFICE.

To all to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the printed records belonging to the library of this office of the specification and drawing in the matter of the English patent granted to G. A. Robinson and R. E. Lee, July 10th, 1849, No. 12,703.

"*Exhibit A.*"

In testimony whereof, I, D. P. Holloway, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this twenty-ninth day of April, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

508 [SEAL.] D. P. HOLLOWAY.

To all to whom these presents shall come:

We, George Augustus Robinson, of Long Melford, in the county of Suffolk, gentleman, and Richard Egan Lee, of the city of Glasgow, North Britain, gentleman, send greeting:

Whereas, her present most excellent Majesty Queen Victoria, by her royal letters patent, under the great seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the tenth day of July, in the thirteenth year of her reign, did, for herself, her heirs and successors, give and grant unto us, the said George Augustus Robinson and Richard Egan Lee, her especial license, full power, sole privilege and authority, that we, the said George Augustus Robinson and Richard Egan Lee, our ex'ors, adm'ors, and assigns, and such others as we, the said George Augustus Robinson and Richard Egan Lee, our ex'ors, adm'ors, or assigns,
509 should at any time agree with, and no others, from time to time, and at all times during the term therein mentioned, should and lawfully might make, use, exercise, and vend, within England, Wales, and the town of Berwick-upon-Tweed, within the islands of Jersey, Guernsey, Alderney, Sark, and Man, and also within all her Majesty's colonies and plantations abroad, our invention of certain improvements in the manufacture of bread and in the machinery or apparatus to be used therein, and also improvements in the regulation of ovens and furnaces, parts of which improvements

are also applicable to other similar useful purposes, in which said letters patent is contained a proviso, obliging us, the said George Augustus Robinson and Richard Egan Lee, by an instrument in writing under our hands and seals, or under the hand-seal of one of us, particularly to describe and ascertain the nature of our said invention, and in what manner the same is to be performed, and to cause the same to be enrolled in her said Majesty's High
510 Court of Chancery within six calendar months next, and immediately after the date of the said in part recited letters patent.

Now, know ye, that, in compliance with the said proviso, I, the said Richard Egan Lee, on behalf of myself and of the said George Augustus Robinson, do hereby declare the nature of our said invention, and in what manner the same is to be performed, to be particularly described and ascertained in and by this present instrument in writing—reference being had to the drawings hereunto annexed and to the letters and figures marked thereon. That is to say:

Our said invention consists, first, in the application and use of what is known as carbonated or aerated water in the manufacture of dough for bread, for the purpose of producing a greater amount of nutrition from a given quantity of flour or meal, as also for improving the quality of the bread.

Second. In certain novel and peculiar arrangments of machinery or apparatus for mixing the materials and preparing the dough of which bread is to be made, whereby greater economy,
511 efficiency, and speed of production is secured than is possible with the ordinary arrangements now in use.

Third. In the direct application and use of surcharged steam, for baking and general heating purposes, as for sugar or plaster baking, coffee roasting, charcoal making, and various drying apparatus; the object being to obtain an increased economy of fuel and time without incurring the objections attending the use of high-pressure steam, together with a more efficient power of controlling and indicating the degree of heat employed.

And in order that the object of our said invention may be properly understood, we shall now proceed to describe the several figures on the sheet of drawings hereunto attached.

Figure 1 on the sheet of drawings is a complete front elevation of one modification of the machine which we employ, in the manufacture of bread or biscuit, as a substitute for the ordinary manuel process.

Figure 2 is a corresponding side elevation of the same. The carbonated or aerated water, which we have introduced as one
512 branch of our improvements in the manufacture of bread, is contained in a fountain, A, on a bracket at the back of the machine. This fountain is supplied with the fluid from a separate reservoir in such a manner as to maintain a uniform rate of pressure within it, suitable for the exigencies of the machine, which derives its supply from it by the pipe B. C is the flour-hopper, in which a horizontal spiked shaft D, is arranged to work with a compound

movement, partly lateral and partly revolving, being connected by a crank and link to a second crank, of similar size, carried on the end of the flour-feeding shaft E, so as to obtain the requisite movement for giving the flour in the hopper a light, even, and unintermittent delivery from the hopper to the feed roller represented in dotted lines at F. This roller, which is made of wood or other suitable material, is fluted or grooved, and has a clearing-wire G, bearing against its under surface to prevent the chance of the choking of the flour. The peculiar object of this arrangment of flour-feeding apparatus is the prevention of the clogging or cohering hitherto
513 found to be so objectionable in flour mills and bakeries, together with the obtainment of a more complete system of mixing or amalgamation of the materials.

This portion of the machine is also applicable for feeding purposes in grain mills, and for other purposes where a continuous and uniform feeding action is required. For the regulation of the relative supply of flour and fluid to the machine, the governor H is used, its sliding ring at the top being made to act by means of suitable lever connections upon the spindle I, which communicates with a valve or stop-cock upon the supply pipe B of the fountain, so as to permit of the discharge of more or less fluid, accordingly as the greater or less speed of working brings down more or less flour from the hopper. But as it is occasionally necessary to vary the quantity of fluid to be supplied according to the quality of the flour or the kind of dough to be made, the key of the supply-cock is bored out and fitted with a piston, to afford a separate means of adjustment, so that the baker is thus enabled to regulate the consistence of the dough with the greatest precision. The mixing cone K, of hard
514 wood or other suitable material, is keyed upon the vertical kneading-shaft L. It is furnished with a cover M, made of galvanized iron, and having a cleaver or scraper of the same material on its under surface to guide the half-formed paste into the kneading mill or drum N, which is a cylinder of hard wood or other suitable material, having within it a series of horizontal arms set at regular intervals on its interior surface, at angles of about thirty degrees from left to right, and wide enough asunder to permit of the passage between them of similar arms on the revolving kneading shaft L. This shaft is carried in top and bottom bearings at O O, and works through a stuffing box in the bottom of the drum N, carrying a series of arms set angularly in a direction opposite to that of the fixed arms in the interior of the drum. Or instead of this arrangement of a cone and cover, fixed horizontal scrapers may in some cases be used. A short metal tub e P, is screwed to the side of the drum over an aperture formed therein, forming the escape for the dough, which, as it exudes, is cut off into pieces of the proper size for
515 the intended loaves by the sliding knife Q, working vertically on parallel guides at the requisite intervals. It receives motion from a lever R, carrying on to its shorter end a stud working in a groove in the back of the cam or guide-wheel S, the speed of which is capable of regulation by the shifting spur-wheel T T

Instead of this cutter or sliding knife, a rotary or direct acting cutter may be used for severing the masses of dough; and instead of the cam or guide wheel, a tappet and stud may be employed to give motion to the apparatus. The regulation of the rate of cut, as governing the weight of dough cut off, may be accomplishsd by the ordinary double cone pulley movement, or by a pinion or pulley and face wheel, as applied in the smaller machines of this class. On the delivery of the dough from the mill, it is conveyed by a wooden or other roller U, to the moulding frame V V. This roller derives a slow movement from the worm-wheel W, gearing with a worm or endless screw X, to agree with the rate of delivery and cutting off of
416 the pieces of dough. The moulding frame V V is an apparatus consisting of a frame with two concave pulleys and an endless cloth, part of which last is removed to show the lower gearing of the machine. The endless cloth is carried by bands or pitch chains upon the concave pulleys beneath the dredging box Y, in which is placed a revolving circular brush, arranged to keep the cloth and the piece of dough under conveyance well dusted with flour in its transit; and in the return movement of the cloth it passes over a fixed block of wood Z, which is hollowed out on its upper side, to form, with the contour of the pulley V, a complete cylindrical passage or opening. Through this passage the dough is conveyed, as represented by the arrows, being rolled or pressed in its transit with a ball or globe ready for conveyance to the oven by the baking truck. According to another modification of this arrangement, a segment of a metallic or other cylinder may be used instead of the cloth and hollowed block. When biscuits are manufactured by this machine, the moulding frame is not required, as the dough, on issuing from the
517 kneading drum, is conveyed directly to the ordinary cutting-out machine. If in place of using carbonated water, the ordinary barm or fermenting process is used in connection with this machine, then, instead of supplying flour from the hopper, as hereinbefore described, the material, in the form of "half sponge," is supplied by the vertical "sponge" tube *a*, the supply being regulated by the governor, as described with reference to unfermented bread making.

In detailing the actuating mechanism of the machine, which, however, is capable of various modifications, it is to be understood that *b* is the first motion shaft, receiving its motion from any suitable prime mover through the fast and loose pulleys *c c*, and carrying a spur-wheel *d*, gearing with the wheel *e*, on the the main shaft *f*, in connection with the adjustable wheels T T. The same shaft gives motion to the vertical kneading shaft by the pair of bevil wheels *g g*, as also through the wheels *h h*, to the horizontal sharft *l*, carrying
518 the worm X, before referred to. It also gives motion through the pair of bevil wheels *m m*, to the governor spindle, and through the two bevil pinions *n n*, to the olique shaft *o*, to the flour-feeding roller. In the machine herein described the speed of the horizontal shaft *f* is intended to be about thirty revolutions per minute, at which rate it will produce about one and a half tons of loaf

bread, or one ton of biscuit per hour. By removing the pulleys on the first motion shaft, the machine may be driven by hand.

Figures 3, 4, and 5 of my sheet of drawings, represents the arrangements which we have adopted for baking the dough for loaves or biscuits. Figure 3 is a front elevation of the oven and boiler, which we use for this purpose, and figure 4 is a transverse section of the same corresponding. Figure 5 is a sectional plan of the same, the boiler being in elevation. The ovens, or heating chambers, are four in number, A A and B B, all built together with a steam boiler C, between the two pairs.

519 Those marked A A are to be distinguished as proving or raising chambers, into which the fermented or barn bread is first placed on commencing to bake. They are heated by the steam chest E E E E. The other two, marked B B, are steam ovens, heated by the coiled pipes D D, passing through the boiler furnace under a protective covering of fire tiles, and are kept at a red heat. After the steam supplied from the boiler C by the pipe F, and the connections G G has heated the chambers A A by the boxes E, it passes through the coiled pipes D D, by which means it is surcharged with heat without acquiring an additional pressure, and in that state is blown into the ovens B B, to act as the baking heat for the dough placed therein. Trumpet-mouthed tube, H H are placed in the tops of the ovens, to afford a means of egress for the steam and vapor, which is carried off by the vertical pipe I to a condensing receiver, where, when quite cold, it is charged with carbonic acid gas, with the addition of salt, for the supply of the carbonated liquid fountain.

520 To afford the necessary means of regulation of the heat of the ovens, we employ a species of pyrometer, or, as we term it, a heat governor, arranged so as to act as a constant regulating power, in addition to its use as an indicator of temperature. Two brackets, L and M, are set in the side of one of the ovens; and into the first of these brackets L a copper rod or bar N is fixed, resting loosely in a groove formed in the second bracket M. In its cold state this rod first reaches to a lever O, placed outside the front of the oven. The expansion and contraction of this rod, due to the variations in the temperature of the ovens, then act upon the lever O, and through it upon the second or index lever P, pointing to a graduated arc on the front of the oven. A link from this index is jointed to a bell crank Q at the top of the boiler, and thence to a econd one R, which communicates by a vertical rod with a regulating valve S on the supply pipe D, for the surcharged steam, by which the flow of the latter to the ovens is consequently regulated. It will be obvious to practical men that this arrangement of heat regulator and indicator may be applied to various other processes, wherein an accurate automatic regulator is required.

521 Having now described and particularly ascertained the nature of our various improvements, and the manner in which the same are, or may be used or carried into effect, we would observe, in conclusion, that we do not confine or restrict ourselves to the precise details or arrangements of mechanism or apparatus which

we have had occasion to explain or refer to, as several variations may be made therefrom without deviating from the principles of our invention, but what we consider to be novel and original, and, therefore, claim as the invention secured to us by the hereinbefore in part recited letters patent, is—

First. The application and use of carbonated or aerated water in the manufacture of bread.

Second. The general construction and arrangement of the machine hereinbefore described, and its application to the manufacture of dough for bread and biscuit.

Third. The method or system of feeding or supplying flour
522 or meal from the mass in a regular and continuous stream or discharge.

Fourth. The mode or means of assimilating, uniting, mixing, and kneading the materials used in the manufacture of bread and biscuit in a constant and uniform manner, as distinguished from the ordinary intermittent system.

Fifth. The system or mode of giving out or delivering the dough for bread or biscuit of regular consistence by a constant supply.

Sixth. The system or mode of cutting off any desired portion of the stream or supply of dough, together with the peculiar apparatus hereinbefore described as employed for this purpose, and the arrangement or contrivance for altering or adjusting the length or rate of cut and the consequent weight of the separated pieces.

Seventh. The system or mode of moulding or forming the dough into shape for loaves or forms in which the bread is to be made, together with the apparatus employed therein.

523 Eighth. The application and use of surcharged steam for heating ovens, and for other like purposes.

Ninth. The use or employment of the self-acting pyrometer, or heat regulator or governor, in regulating and indicating the heat of ovens, furnaces, and other heating apparatus.

In witness whereof, I, the said Richard Egan Lee, have hereunto set my hand and seal, this fifth day of January, in the year of our Lord one thousand eight hundred and fifty.

[L. S.] RICH'D E. LEE.

Signed, sealed, and delivered in the presence of—
WILLIAM JOHNSON, *C. E., Glasgow.*
JOHN H'Y JOHNSON, *Sol'r, Glasgow.*

Endorsed: Opened January 31, 1866, for Mr. Chandler. Wm. H. Bradley, cl'k.

[Here follows diagram marked page 523.]

524 2.—*Certified copy of English patent to John Danglish, as follows, to wit:*

525 THE U. STATES PATENT OFFICE:

To all to whom these presents shall came greeting:

This is to certify, that the annexed is true a copy from the printed records belonging to the library of this office of the English patent granted John Danglish, Oct. 1, 1856, No. 2,293.

"*Exhibit B.*"

In testimony whereof, I, D. P. Holloway, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-ninth day of April, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

[SEAL.] D. P. HOLLOWAY.

526 To all to whom these present shall come, I, John Danglish, of Great Malvern, in the county of Worcester, doctor of medicine, send greeting:

Whereas, her most excellent Majesty, Queen Victoria, by her letters patent, bearing date the first day of October, in the year of our Lord one thousand eight hundred and fifty-six, in the twentieth year of her reign, did for herself, her heirs and sucessors, give and grant unto me, the said John Danglish, her especial licence, that I, the said John Danglish, my executors, administrators and assigns, or such others as I, the said John Danglish, my executors, administrators, and assigns, should at any time agree with, and no others, from time to time, and at all times thereafter during the term therein expressed, should, and lawfully might make, use, exercise, and vend, within the United Kingdom of Great Britain and Ireland,
527 the Channel Islands, and Isle of Man, an invention for "an improved method of making bread," upon the condition (amongst others) that I, the said John Danglish, my executors or admistrators, by an instrument in writing under my, or their, or one of their hands and seals, should particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, and cause the same to be filed in the great seal patent office, within six caltndar months next, and immediately after the date of the said letters patent.

Now know ye, that I, the said John Danglish, do hereby declare the nature of the said invention, and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement thereof, that is to say:

Heretofore, in the manufacture of bread, the dough has sometimes been made by mixing flour in a closed vessel with water charged with carbonic acid gas. Now, this invention consists in compressing the air in the vessel in which the flour is contained before
528 admitting the water charged with gas, so as to prevent the

escape of the gas before the process of mixing or kneading is completed. The apparatus, in which it is prepared to conduct the process, consists of a strong spherical vessel, mounted on trunnions or axes. Through this vessel a shaft passes, on which a ring is mounted, corresponding in size with the sphere, and also a series of knives. The flour and other material, of which the dough is to be made, is introduced into the spherical vessel by a suitable door; air is then compressed into the vessel, and the aerated water is admitted. To mix the materials, the spherical vessel is caused to revolve in one direction, while the axis carrying the ring and knives turns in the contrary direction.

Having thus stated the nature of my said invention, I will proceed more fully to describe the manner of performing the same.

Description of the drawings.

Figure 1 shows a plan, in section of apparatus, used in carrying out my invention; figure 2 shows a vertical section of the
529 apparatus; and figure 3 shows a side elevation of the apparatus; *a* is a vessel, in which the water is aerated with carbonic acid gas, for which purpose the gas is generated in a suitable vessel *b*, and is either allowed to flow into the vessel *a*, by the pipe *c*, or pumps *k k*, may be used for the purpose of forcing the gas into the vessel *a*. I would here state that the aerating of water separately is not claimed by me, neither is the use of aerated water in the mixing of dough new or claimed by me seperately, and the apparatus for aerating water for such purposes may be greatly varied. *e e* is a glass guage connected to the vessel *a*, at top and bottom by tubes *e e*, to indicate the quantity of water in that vessel, and also to facilitate the proper quantity of water being run therefrom into the mixing and kneading vessel *f*, according to the quantity of dry bread stuff introduced into the vessel *f*. The vessel *f* is connected to the vessel *a*, by the pipe *g g*, to which there is a stop-cock *h*; the vessel *f*, is also connected to the air pumps *k*, by the pipe *i*, to which there is stop-
cock *j*. The pipe *g g*, communicates with the hollow axes *h*, of
530 the vessel *f*, such hollow axis turning in a suitable bearing and stuffing-box to keep the parts tight; *l* is a tube connected with the air pipe, by which air or gas can be pumped into the vessel *a*; when with drawing water therefrom in the vessel *f*. The vessel *f* is provived with a man-hole or opening with a cover, as shewn in figure 2. The vessel *f* is shown to be of a spherical form in figures 1, 2 and 3, but other forms may be used; and figure 4 shows a section of a vessel *f* of a cylindrical form. On the the interior of the vessel *f* is an axis *m*, with two sets of knives, one set on either side of the axis. Each set of knives consists of a series of blades fixed at one of their ends, to the axis *m*, the other ends being fixed to a bent or semicircular blades *n*; these blades are each made with two edges.

The shaft or axis *m* receives rotary motion by the bevilled toothed wheel *o*, working in the teeth of the fixed bevilled tooth wheel *p*. It will be observed that in this arrangement the bevilled wheel *o* works

in teeth outside of the fixed bevilled wheel *p*, thus causing the shaft or axis *m*, to rotate in the same direction as the vessel *f*, but
531 if the fixed bevilled wheel *p* were enlarged so as to allow the bevilled wheel *o*, to work in teeth fixed inside of it, the axis *m* would rotate in a contrary direction to the vessel *f*. In using this apparatus, having caused the water in the vessel *a* to absorb, by means of a given pressure, the necessary quantity of carbonic acid gas (or any other suitable gas,) which quantity will be regulated by the degree of lightness of which the bread is to be made, a quantity of dry bread stuff is placed in the vessel *f*, according to the quantity of dough to be prepared, the cover to the opening or man-hole in the vessel *f* is then to be closed air-tight; a quantity of air or other suitable gas is then pumped or forced into the vessel *f*, so as to obtain therein a controlling or regulating pressure, as great or greater than that in the vessel *a*, in order that the gas may be retained in the water, when it is run into the vessel *f*, until the end of the kneading process, or for such other period as the operator may desire.

The stop cock, by which the air or gas is admitted, having been closed the quantity of water requisite is run in from the
532 vessel *a* into the vessel *f*; the cock is to be closed, and the vessel *f* is to be put in motion by a strap from a steam engine or other power acting on the drum *g*, and the motion is to be continued till the mixture and kneading is fully accomplished. The vessel *f* is then to be stopped, the cover to the man-hole, (which should at this time be downwards,) is to be removed, when the dough will be pressed out through the man-hole, by the internal pressure, into a trough or receiver placed below. Figure 5 [No. II.] is a side elevation, partly in section, of an apparatus somewhat differing from that before-described. Thus A A is the mixer; it is a strong spheroidal vessel, somewhat greater in its perpendicular diameter than in its horizontal diameter; it is mounted and fixed in a suitable framing BB; it is furnished with a man-hole C at the top, with a suitable cover, and the means of fastening it so as to render it air-tight, and at the bottom there is another opening of a similar size, which is closed by a slide D, worked by a screw and handle.

Figure 6 is a front elevation in section of this spheroidal vessel.

533 Through this vessel at the stuffing boxes EE, a shaft or spindle F passes, and on this shaft are fixed the arms or agitators *f f f f f*, (short arms are also fixed at the back of the mixing vessel at right angles to the axis of the shaft F, in the spaces between which the arms or agitators *f f f f f* pass, by which means the operation of mixing or kneading is facilitated.) To one end of the shaft F, the toothed wheel G is fixed, and motion is given to this wheel by a smaller toothed wheel, which again receives its motion from a steam engine or other motive power by the drum H, fixed in the same shaft with it. I, figure 5, is a cold-water cistern, in which is placed a set of force pumps, so arranged that they can pump either air, gas, or water, and the gas and air pipes are made to circulate in this cistern for the purpose of keeping them cold during the process

of pumping; K K is a gas generator, furnished with an acid holder L and a valve *m*, for regulating the flow of acid by the amount of pressure within the generator acting upon the piston *n*, working in the cylinder *o*; P is the gas purifier, from which the gas is
534 pumped into the condenser *e*, where the water for mixing is to be charged with the proper quantity of gas. This apparatus is worked in the following manner: Having supplied the generator K K, with the proper materials for the generation of carbonic acid gas, the gas passes through the pipe *e* into the water in the purifier P, rising through the water to the upper part, from thence it is pumped by the pipes *s s* into the condenser Q.

When the requisite pressure is obtained within the condenser, the three way-cocks *t t* are changed so as to admit of water being pumped instead of gas; this water passes through the pipes *u u*, and is thrown into the condenser through a rose at the top of the condenser, and falling in a shower through the condensed gas absorbs it into its own bulk. (The condenser Q is furnished with a glass guage, in the same manner as the vessel *a* in figure 3, for the purpose of measuring the quantity of water in it, and by which to regulate the quantity of water flowing out of it.)

Having thus prepared the water, a quantity of dry bread-stuff is put into the mixer A A, through the manhole C, which, being
535 properly secured and air-tight, the three way cock *t t* are turned so as to admit of air or gas being pumped through the pipe *v v*, into the mixer A A, and the pumping is continued until the pressure is sufficient to prevent the escape of gas from the water, when it is drawn into the mixer, until such a period as the operator may desire; thus, if it be desired to retain in the water, when admitted into the mixer the whole of the gas, the [the] pressure of air (or gas) in the mixer will be made to equal (or exceed) the pressure in the condenser, and so on.

When the necessary pressue is obtained, the cock *w* is turned off and the cock *x* is opened; the shaft F, with the arms *f f f f f* is set in motion, the three way cocks, *t t* are turned, so that the pumps will pump gas into the condenser, by which means the areated water is made to flow through the pipe *y*, into the mixer until a sufficient quantity of water has been run into the bread-stuff in the mixer; the cocks *x w* are then closed; the pumping is discontinued, and the mixing or kneading proceeds, until it is completely effected; the slide D is then opened, and the dough falls or is forced out
536 into a proper trough or vessel provided to receive it.

So soon as the dough is thus released from pressure, that portion of the gas which was retained in the water by the excess of pressue, escapes from the water, and in doing so, causes the dough to rise or become spongy, when it is fit to be made in loaves and put into the oven.

Having thus described the nature of my invention, and the manner of performing the same; I would have it understood that I make no claim to any of the parts of the apparatus seperately; but what I claim, is the combining of apparatus for the making of bread with

aerated water, in such manner that the escape of the gas from such aerated water may be completely controlled at the will of the operator during and after the process of mixing or kneading; such control being obtained and exercised by means of placing the flour, meal, or other such material in closed vessels under an excess of pressure of atmospheric air or other suitable gas before admitting the water to mix or knead with it.

In witness whereof, I, the said John Danglish, have here-
437 unto set my hand and seal, this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

[SEAL.] JOHN DANGLISH.

Witness:

TIMOTHY RAPER,

The Court Herfordshire, 28th March, 1857.

Opened Jan'y 31, 1866, for Mr. Chandler.

WM. H. BRADLEY,
Cl'k.

[Here follows 2 diagrams marked page 537, No. 1, and 537, No. 2.]

538 3. Depositions and exhibits of Cornelius Kendall, Orrin Kendall, and Hugh Templeton as follows, to wit:

Circuit Court of the United States for the Northern District of Illinois.

JOSEPH M. DAKE
vs.
ORRIN KENDALL.

D. C. & I. J. Nichols, and W. C. Goudy for complainant, and Woodbridge and Grant for defendant.

Depositions for defendant taken before O. R. W. Lull, notary public by stipulation, this 25th August, A. D. 1865, instead of before the master to whom the cause was referred.

GOUDY & CHANDLER,
For compl't.
WOODBRIDGE & GRANT,
For def't.

Deposition of Cornelius Kendall.

Cornelius Kendall, a witness of lawful age, on the part of the defendant, being first duly sworn, deposeth and saith:

Interrogatory 1. What is your age, residence, and occupation?

Ans. Am 26 years old; reside at 189 Wabash avenue, city of Chicago; by occupation a baker.

Interrog. 2. Do you know the parties to this suit? If yea, how long have you known them?

539 Ans. I do know them; I am son of defendant, and have known Mr. Dake about five years.

Interrog. 3. Do you know John Pendleton? and if so, when and where did you make his acquaintance?

Ans. I know him; made his acquaintance, I think, in June, 1864, in my father's shop in Chicago.

Interrog. 4. State if you know how long John Pendleton was in the city of Chicago at that time?

Ans. I think about 4 or 5 days.

Interrog. 5. Examine the paper now shown you, and state if you ever saw the same, and annex the same as an exhibit to your deposition?

Ans. I have seen it; and I herewith annex it marked Exhibit I.

Interrog. 6. When, and under what circumstances did you first see it?

Ans. In the afternoon that the contract was signed between my father and Mr. Pendleton for the aerated bread patent; this was in June, 1864.

Interrog. 7. Who, if any one, showed it to you, and for what purpose?

Ans. My father showed it to me as instructions for making bread.

Interrog. 8. Who was present when your father showed it to you?

Ans. Mr. Pendleton, Mr. Bond, Mr. Coats, father, and myself.

Interrog. 9. What, if anything, did John Pendleton say on that occasion about this paper?

(Objected to.)

Ans. He said they are instructions for making bread.

Interrog. 10. Did you ever make any use of said instructions? If so, what?

540 Ans. We tried to make bread with them.

Interrog. 11. What amount of experience have you had as a baker?

Ans. I have been in a bakery all my life, with the exception of about a year and a half.

Interrog. 12. What knowledge have you of the business, if any?

Ans. I do not know how to answer that question.

Interrog. 13. Do you or do you not consider yourself a practical and competent baker?

Ans. I do not; practical and competent bakers are scarce in this city.

Interrog. 14. In using the instructions named above, did you have any assistance from any one? If so, from whom?

Ans. I had from Yankee. His true name is C. B. Ayre.

Interrog. 15. When and where did you attempt to put these instructions in practice?

Ans. I don't remember the time, but it was my father's bakery in this city.

Interrog. 16. How long a trial did you and Yankee make of them?

Ans. About ten (10) days, when we thought we had the thing perfect, and I quit.

Interrog. 17. Had any one in your father's shop made any previous trial of these instructions? If so, who?

Ans. We had a man; but whether he worked under those instructions or not, I don't know. He said he had worked for 4 years at the business, and understood it; his name was Weeks; don't know his first name.

Interrog. 18. About how long was Weeks employed by your father in making aerated bread?

541 Ans. I think about two months.

Interrog. 19. Had there been any change in the machinery used by your father in making aerated bread since it was put up, up to the first of July last past.

Ans. Not until we moved it up to the other shop, some time this summer.

Interrog. 20. What success had Mr. Weeks in making aerated bread?

Ans. I never saw him make a good loaf of bread.

Interrog. 21. What success had you and Yankee in making aerated bread while you followed instructions contained in Exhibit "1."

Ans. We never made a good loaf of bread.

Interrog. 22. Have you since continued to follow those instructions? and if not, what changes have you made in the process?

Ans. We have not continued to follow those instructions; we have changed the speed of both the pump and kneader, and also the manner of working the kneader. We increased the speed by about 40 revolutions, making about 80 revolutions per minute. In fact we made the same changes in both shops. The instructions he gave us he said the bread should knead about 20 minutes; we did not knead it over 2 minutes.

Interrog. 23. Why did you increase the number of revolutions and the manner of working the kneader?

Ans. Because we could not make bread any other way.

Interrog. 24. How did you ascertain the plan you finally adopted?

Ans. Ascertained it by experiment.

Interrog. 25. What kind of bread did you make (as to quality) by the plan you finally adopted?

Ans. I think we made the best bread I ever saw.

542 Interrog. 26. When did your father procure the machinery for making aerated bread?

Ans. I think it was some time in the latter part of July, 1864.

Interrog. 27. In what condition was it when it arrived?

Ans. In a very bad condition.

Interrog. 28. Did you put it up as it was, or did you have it repaired? and if the latter, by whom?

Ans. Did not put it up as it was; sent it over to F. Krause's machine shop, and had him repair it.

Interrog. 29. When did you get it in working order?

Ans. I have not the sleightest idea when it was.

Interrog. 30. In what month did you commence making bread?

Ans. I think it was the latter part of September; I am not positive about dates.

Interrog. 31. In what condition was the machinery when you commenced making bread with it?

Ans. It was in the same condition that it now is.

Interrog. 32. Did you go to Woodman's bakery April 20, 1865? and did you see Mr. John Pendleton?

Ans. Yes.

Interrog. 33. At what hour?

Ans. I think it was about 5 o'clock, p. m.

Interrog. 34. Who was present beside you and John Pendleton?

Ans. My father, Mr. Woodman and Mr. Dake.

Interrog. 35. What reason, if any, did John Pendleton give for conveying the patent to Woodman?

(Objected to.)

Ans. He said representations had been made to him by
543 parties from Chicago that father was insolvent, and that if he took his notes he never could collect a cent on them.

Interrog. 36. When John Pendleton was in Chicago, in June, 1864, did he say anything about Mr. Latta's establishment, in Cincinnatti, for making aerated bread? and if so, what?

(Objected to.)

Ans. He said it was a splendid place, and advised me to go and see it, and gave me a letter of introduction to A. B. Latta.

Interrog. 37. Did you see John Pendleton April 20, 1865, before the interview you have mentioned in Woodman's bakery? If so, where?

Ans. I saw him the same afternoon of the interview, in my father's office.

Interrog. 38. Did he see any of your aerated bread at that time? If so, what did he say about it?

(Objected to.)

Ans. He did see it, and I asked him how it compared with the Rochester bread. He said he thought the Rochester bread hardly equaled ours.

Interrog. 39. After you had showed him the bread, did he start to go away and then return? and if so, why?

Ans. He did start to go away, but did not come back.

Interrog. 40. Had he started to go away before you showed him the bread?

Ans. Yes.

Interrog. 41. Why did he come back?

Ans. After I saw him in the office he started to go down stairs, and then came back and told me to be sure and have father in the office between 8 and 9 o'clock in the morning.

(Answer objected to.)

544 Interrog. 42. What did he say when he came back?

(Objected to.)

Ans. He said be sure and have father there between 8 and 9 o'clock in the morning.

Interrog. 43. Did you see J. M. Dake in your father's store or office at any time in last February or March?

Ans. I think it was about that time that I saw him there?

Interrog. 44. How often?

Ans. I think twice.

Interrog. 45. Did you see him elsewhere during the same period? and if so, how often?

Ans. I saw him up at Woodman's store on S. Dearborn st. once, and once in the street.

Interrog. 46. At either of the interviws at your store which you have named, did Mr. Dake see your father?

Ans. Yes. He'd been up in the office with my father at one time about two hours, I think.

Interrog. 47. Did J. M. Dake tell you what he had been saying to your father? If so, what?

Ans. He did tell me. He said that he had offered to lend father any amount he required in his business up to $10,000, and give his services for $2,500 per year.

Interrog. 48. Did you and Mr. Dake have any further conversation after he had told you this? If so, what?

Ans. We did. He told me that he thought it would be a good thing for father, and that he (father) would be doing the same as a cash business. He said he would take the bills of the stuff as fast as shipped, and give him the cash on them.

545 Interrog. 49. What, if anything, did you say to him about his proposition?

Ans. I told him that I should not advise father to do it; that I did not think he needed the money in his business; that if he would go into partnership with father and raise the building, I should advise father to do so.

Interrog. 50. What did J. M. Dake say after you made the statement you have given in your last answer?

Ans. I don't think he said anything just then; but we agreed to meet at Woodman's bakery, and talk it over with father there.

Interrog. 51. Who proposed the meeting at Woodman's bakery?

Ans. I think it was a kind of a mutual proposition.

Interrog. 52. Who introduced the subject?

Ans. I do not remember.

Interrog. 53. Who authorized you to suggest a partnership to J. M. Dake?

Ans. It was my own suggestion; I had no authority.

Interrog. 54. Had you ever conversed with your father upon the subject at that time?

Ans. Father told me about Mr. Dake's proposition just after my interview with Mr. Dake, and told me then that he didn't want to have anything to do with it. I never had any conversat with my father about it previous to my conversation with Dake.

Interrog. 55. Did J. M. Dake tell you, on this occasion, that your father had proposed a partnership to him?

Ans. He never told me at that time or at any other.

Interrog. 56. Did the meeting take place at Woodman's
546 bakery between you and J. M. Dake? If yea, at what hour?

Ans. Yes; it took place about 7 o'clock in the evening, and continued, I think, up to 9 or 10 o'clock.

Interrog. 57. Did you have more than one evening meeting with Dake at that place?

Ans. No.

Interrog. 58. What did you say to him at the meeting last named?

Ans. I tried to get him to go into partnership with father.

Interrog. 59. Did you say anything to him about the business? And if so, what?

Ans. Yes. I told him what we were doing, what disadvantages we were laboring under by having our machinery in such bad order, and what an advantage it would be to us to have new ovens, new engine and machinery put in. I compared the cost of running our engine with R. T. Cranes on the West side, and showed him the difference between the cost of running our ovens and that one of Thompson & Templeton.

Interrog. 60. Was anything said in this conversation at Woodman's bakery about the cost of making aerated bread and the process? If so, what was said, and who said it?

Ans. There was nothing said about the process, but I figured out the whole cost of making it. I figured the cost of the gas and the cost of the flour, the labor, the cost of baking, and then I told the number of loaves that I got out of a barrel of flour, and deducted 12 per cent. commission which was allowed for selling.

Interrog. 61. Was anything said, and if yes, by whom, about
547 the nett profit of manufacturing a barrel of flour into aerated bread?

Ans. After I'd made those figures, of course that showed the profit.

Interrog. 62. Did or did not J. M. Dake see these estimates?

Ans. Yes; he saw them.

Interrog. 63. Did you have any conversation with him about them? If so, what?

Ans. I don't know as there was anything said about the estimates, any more than looking at them.

Interrog. 64. Did or did not J. M. Dake examine your said estimate?

[Interrog. 65. Did or did not said Dake examine your said estimate?]

Ans. He was sitting right by me, and saw me make all the figures.

Interrog. 66. Was anything said about the quantity of aerated bread your father made per day? If so, what, and by whom?

Ans. I told him how many barrels we were making per day.

Interrog. 67. Did you furnish any other items of the business done by your father? If so, what?

Ans. I compared our business with Thompson & Templeton's, and told him that they said that they had made $12,000 per year; and I also told him I thought we had done twice as much business as they had.

Interrog. 68. Did you say anything to him about the cracker business? If so, what?

Ans. When I spoke about Thompson & Templeton's business, I referred to the cracker business.

Interrog. 69. Did J. M. Dake ask you any questions about
548 the business? and if so, what?

Ans. He asked me about the business, and I told him all I knew about it.

Interrog. 70. Did J. M. Dake, at Woodman's bakery, ask you anything about the contract or arrangement with Pendleton? If so, what?

Ans. He asked me something about it, and I told him it was all right.

Interrog. 71. What did you say in reply?

Ans. That's what I said; I said it was all right.

Interrog. 72. Did J. M. Dake tell you at this interview at Woodman's bakery, that your father had proposed to go into partnership with him, or words to that effect?

Ans. No; he did not.

Interrog. 73. Was any[any]thing said about the patent under which aerated bread was made, at the last-named interview?

Ans. I never heard the words used at all at that interview. Nothing was said about the bread except what I have mentioned.

74. What figures and estimates, if any, did J. M. Dake make at the last-named interview?

Ans. He did not make any at all. All that were made were made by me.

Interrog. 75. What opinion, if any, did J. M. Dake express at that interview about your father's business?

Ans. He said at that and at many others times, that it was a splendid business, and that he'd rather have it than any retail grocery business in the city.

Int. 77. What did J. M. Dake say at that interview, if
549 anything, about going into partnership with your father?

Ans. He said h'd about made up his mind never to go into active business again; that he didn't want to go into business with anybody. He said then that he'd think about what I'd told him, and see me again about it.

Int. 77. Did J. M. Dake say at the last-named interview that he'd been a partner with your father for one year, and that he'd never be again, or words to that effect?

Ans. No; he did not.

Int. 78. Did your father ever know of your suggesting to Dake a partnership between them?

Ans. No; he did not.

Int. 79. Did J. M. Dake, at any conversation on the sidewalk, in front of your father's store, last February or March, tell you that he'd been a partner of your father one year, and that your father had drawn more money in two months than he was entitled to draw for a year; that your father had used the firms's name to endorse his own

individual paper, unbeknown to the other members of the firm, contrary to the articles of copartnership; and that it was impossible for him (Dake) to get out of the firm with the money that he put in, and with difficulty that he could get your father out, and that he never would again be a partner of your father?

Ans. He never told me anything of the kind.

Int. 80. Did he tell you the same things in substance as those contained in the last interrogatory?

550 Ans. No; he did not.

Int. 81. Did he at the said interview at Woodman's bakery?

Ans. No, he did not.

Int. 82. Did he ever?

Ans. He never did.

Int. 83. Did you see J. M. Dake within a day or two after the meeting at Woodman's Bakery?

Ans. Yes.

Int. 84. When and where?

Ans. Near my father's bakery.

Int. 85. What, if anything, did he say to you on the occasion last named?

Ans. He said if father's affairs could be arranged as I had told him they could be, he would go into business with him.

Int. 86. Did J. M. Dake ever tell you that your father had proposed to go into partnership with him?

Ans. No.

Int 87. Why did you stop working with Yankee in the aerated bread business after 10 days?

Ans. Because I got tired of working so steady, and I could not get things done just as I wanted them.

Int. 88. What was the difficulty?

Ans. Yankee wanted to keep increasing the speed of the machines, and I wanted him to work the kneader less, and as we couldn't agree about it, I stepped out.

Int. 89. Did you then use the kneader as you do now?

551 Ans. No.

Int. 90. Did you then have uniform success in making good bread?

Ans. No.

Cross-examined.

Cross-int. 1. At whose request were the written instructions prepared marked Exhibit "1?"

Ans. At father's request.

Cross-int. 2. Was such request made after the completion of the contract with Pendleton?

Ans. Yes, it was.

Cross-int. 3. What did your father say in making such request?

Ans. He said he'd like to have something to show for what he'd bought.

Cross-int. 4. Was there some talk at the time between your father and Pendleton in regard to the process of making aerated bread?

Ans. Yes, there was.

Cross-int. 5. Is it all contained in the written directions marked Exhibit 1?

Ans. Yes.

Cross-int. 6. Did not Mr. Pendleton say that the manner of making good bread depended upon the machinery and the materials to be used?

Ans. I never heard him say anything about machinery or materials at all in connection with making good bread.

Cross-int. 7. What was said at the time in regard to the
552 patent and specifications?

Ans. I do not know what you mean by that question.

Cross-int. 8. Do you understand that that which your father purchased from Pendleton was what is contained in the paper marked Exhibit 1?

Ans. I understood he bought the patent for making aerated bread in Chicago, and that that paper contained instructions how to make it.

Cross-int. 9. Whose patent did you understand he had bought?

Ans. Perry's patent; I think his first name James.

Cross-int. 10. What was the improvement secured by that patent?

Ans. I never read the specifications of the patent through, and do not know what he did claim.

Cross-int. 11. If then the paper marked Exhibit 1 differs materially from the specifications of said patent, do you understand that your father acquired the right to make bread according to the specifications as well as according to said written memorandum?

Ans. I do not know whether it does differ, but I understood he had the right to make bread under the patent.

Cross-int. 12. Was any copy of the patent or specifications delivered by Pendleton to your father?

Ans. I was not present at the whole interview between father and Pendleton, and do not know whether there was or not.

Cross-int. 13. Was not said paper marked Exhibit 1 prepared merely as a memorandum by which to guide you as to the process of making bread?

Ans. I think it was.

553 Cross-int. 14. And if the patent covered any other process, would not your father have the right to use that?

Ans. I suppose he would.

Cross-int. 15. What was the capacity of the machine obtained by your father?

Ans. It was called a one-barrel machine.

Cross-int. 16. After you put up the machine and commenced work, did you have any trouble with the operation of the same?

Ans. We could not make good bread of it the way it was running then.

Cross-int. 17. Did it leak?

Ans. Yes, it did.

Cross-int. 18. How long was it before the machinery was so fixed that it would not leak?

Ans. I do not remember exactly, but think it was two or three months before we got it perfectly tight.

Cross-int. 19. When did your experiments result in making good bread?

Ans. I think it was in February or March before we had good bread right along. I mean of this year.

Cross-int. 20. Do you mean to say that you could make good bread in two minutes with any number of revolutions?

Ans. I mean to say that we could knead the gas into the dough in two minutes.

Cross-int. 21. How long did it take from the time you commenced putting in flour until the dough is ready to be drawn off for the oven?

Ans. About fifteen or twenty minutes, I suppose, to get the
554 dough ready.

Cross-int. 22. Does the machine commence its revolutions when you commence putting in the flour?

Ans. Just as you please; you can do either way.

Cross-int. 23. Can you put in a barrel of flour, close up the vessel, let in gas, and then knead the barrel of flour with 160 revolutions of the machine made in two minutes, so that the dough is ready for the oven?

Ans. I have never seen it done that way. I have seen flour put in, water put in, gas put in, kneaded in 110 revolutions, in 4 minutes.

Cross-int. 24. Then there is no fixed rule in regard to the time required for kneading a barrel of flour?

Ans. There is a fixed rule for every machine. When I spoke of bread being mixed with 110 revolutions in 4 minutes, I did not refer to our machine. When we speak of kneading dough, I mean the same as Mr. Pendleton says in his instructions, to knead the gas into the dough in 2 minutes, instead of in 20 minutes, as he says.

Cross-int. 25. How do you know that Mr. Pendleton meant in his instructions 20 minutes kneading after the gas was admitted?

Ans. He says so in the paper.

Cross-int. 26. Will all flour knead in the same time in the same machine?

Ans. I have never seen any flour that took over 160 revolutions to knead it.

Cross-int. 27. Have you ever seen any flour that took any
555 less?

Ans. I have never tried to knead it with any less; but if the machine were run faster I do not doubt that it could be.

Cross-int. 28. Does not the strength of the flour make some difference in the time and revolutions required to knead it?

Ans. I should suppose it did; but we haave been using flour of about the same strength right along.

Cross-int. 29. Do the number and shape of the arms make any difference as to the time and number of revolutions required to knead it?

Ans. Yes, I suppose it does.

Cross-int 30. Would it be possible for a man who had not seen a machine, and did not know the number and shape of the arms and its capacity, to tell how many revolutions to the minute would be required to knead the flour?

Ans. No.

Cross-int. 31. Is it not the custom to commence the revolution of the arms while the flour is being introduced into the vessel?

Ans. It is in this town, but was not in Cincinatti; and they do not do it in Boston.

Cross int. 32. If you commence to mix before you close up the vessel, does it not require less time and a less number of revolutions after it is closed?

Ans. It depends altogether upon the shape of the arms in the vessel.

Cross-int. 33. How does the shape of the arms have anything to do with that matter?

Ans. I cannot explain it.

Cross-int. 34. If you take a machine and commence to knead the
556 flour at the same time that you commence to introduce it, and continue the revolutions during all the time of its introduction, and after the vessel is closed until the dough is ready for the oven; and then, in the other case, using the same machine, with the same arms, you introduce all the materials, then close up the vessel and make the revolutions until it is ready for the oven, which process will take the longest time?

Ans. In the machine I saw in Boston, where they introduced all of the materials at once, they did it quicker that way than they could the other.

Cross-int. 35. Is there, then, a difference in the time?

And. There was a difference then.

Cross-int. 36. Did you not call at the door of Woodman's bakery at about six o'clock in the evening that you had an interview with Dake in regard to the partnership, and request him to remain at the store after business hours?

Ans. Yes, I believe I did; and I told Dake previous to that interview that I'd let him know when I could come.

Cross-int. 37. Did your father tell you that he would not have anything to do with Dake before you had that interview?

Ans. Yes; he did.

Cross-int. 38. Why, then, did you see Dake, and urge him to go into partnership with your father?

Ans. I thought I could prove it would be a mutual advantage to both, and thought I could get them both to consent.

Cross-int. 39. Did either of them ever consent to do so?

Ans. Mr. Dake said if I could get father's affairs arranged
557 as I told him I could, he would consent.

Cross-int. 40. Did Mr. Dake ever consent to do so? and did you ever get your father's affairs arranged as suggested?

Ans. Mr. Dake consented, but I never got the affairs arranged.

Cross-int. 41. You don't mean to say, then, that Mr. Dake gave any other consent than the conditional one you have named?

Ans. No.

Cross-int. 42. What inquiry did Dake make of you at the interview at Woodman's bakery in regard to the patent for making the aerated bread?

Ans. He asked some such question as this: How is it about the aerated bread? I told him it was all right, or words to that effect.

Cross-int 43.

Cross-examination closed, and the further taking of these depositions was continued to August 26th, at 10½ o'clock a. m.

AUGUST, 26, 1865, 10½ *a. m.*

Parties present by their counsel.

Direct examination resumed.

Int. 91. Why did you suppose that Dake's question, mentioned in in your last reply, referred to the patent for making aerated bread?

Ans. I supposed so because I had told him before how much bread we were making, and he had seen the bread, and knew what
558 the quality was, and he had also told me that as long as we made bread as good as that there was no danger but that we could sell all the bread we could make.

Int. 92. Did you make good bread as soon as you had stopped the leaking of the machine?

Ans. I do not believe the machine ever was perfectly tight.

Int. 93. What had the leaking of the machine to do with your difficulty in making bread?

Ans. If the gasometers were tight enough to hold the gas until we got it into the kneader, it had nothing to do with it.

Int. 94. If the leak were entirely stopped, would you, or would you not, be able to make good bread according to Pendleton's directions, contained in Exhibit 1?

Ans. We would not; the leakage only affected the profits.

Int. 95. What is the effect upon the bread of kneading too long?

Ans. It kills the life of the flour.

Int. 96. When, in reply to 24 cross-interrogatory, you say that there is a fixed rule for every machine, do you mean that every machine is to be worked like every other? and if not, what do you mean?

Ans. I mean that machines of the same size have the same rules to govern them; that is, two machines, built exactly alike; the rule would work as well in one as in the other.

Int. 97. Supposing the machines were of the same size, but the

arms used in kneading were different in size and in number, would the same rules apply to both machines?

Ans. No.

Direct closed.

C. KENDALL.

559 Sworn before me this 26th day of August, 1865.

O. R. W. LULL,
Notary Public.

The further testimony of these depositions was by mutual agreement continued until August 28th, at 10 o'clock a. m.

AUGUST 28, 1865, 10 *a. m.*

Parties present by their counsel, and the further taking of these depositions was continued until the 29th August, at 10 a. m.

Deposition of Orrin Kendall.

AUGUST 29, 1865, 10 *a. m.*

Parties present as before, and Orrin Kendall, defendant in above-entitled suit, being duly sworn, deposed in answer to the several interrogatories as follows, viz.:

Int. 98. What is your age, residence and occupation?

Ans. Age is 54 last Oct.; 189 Wabash Av., Chicago; occupation, baker.

Int. 99. Do you know John Pendleton? If so, when did you make his acquaintance?

Ans. I know John Pendleton; I made his acquaintance in the early part of June, 1864.

Int. 100. Where?

Ans. In Chicago, in my office.

Int. 101. How did John Pendleton come to be in your office at that time? and what was his business?

Ans. He came to sell a papent right for making aerated bread, and that was his business.

560 Int. 102. What did he say to you at that interview?

(Objected to.)

Ans. He said he'd been in the city among the bakers and the citizens generally, and had made inquiry, and had been informed by the best citizens that I was the best man to sell the right to; that I stood at the head of the bakers and was a Number 1 man in the business and reputation.

Int. 103. How many interviews did you have with him at about that time?

(Objected to.)

Ans. I could'nt state the number precisely, but had quite a number, running through several days.

Int. 104. What, if anything, did Pendleton say at either of these interviews about introducing the patent in this region?

(Objected to.)

Ans. He said a good many things; I do not remember all that he said. He stated that he was quite anxious to have the bread manufactured in Chicago, and had been to many parties for that object, and was satisfied that I was the man he had been looking for to take hold of the business, as my locality and reputation in the business would give it a character; and if I would take hold of it, he would afford me every facility in his power to make it a success and pay.

Int. 105. What, if anything, did Pendleton say to you about machinery before you closed the contract?

(Objected to.)

Ans. He said he would aid me in procuring the machinery.

Int. 106. What, if anyting, did he say to you about directions for the use of the patent, before you closed the contract?

(Objected to.)

561 Ans. I do not know as I comprehend the full import of the question. I stated that the thing was all new to me; I knew nothing of the process, and would not take hold of it in the dark. He stated that he would give me all the necessary directions, so that my son Cornelius and others could put this machinery in running order and make the bread; and, if necessary, he would come himself and superintend the putting up of the machinery and making of the bread, and getting it thoroughly started.

Int. 107. What induced you to enter into the contract of the 14 of June, 1864, sworn to by John Pendleton?

Ans. John Pendleton's strong argument in favor of the patent, and great profits and advantages growing out of it of making bread under that process, and the aid and facilities he promised in the whole thing.

(Answer objected to.)

Int. 108. How did you know that any profit or advantage would be realized from the manufacture of bread by that process?

Ans. I only knew of it by John Pendleton's arguments and statements at the time.

Int. 109. Examine Exhibit 1, of the deposition of Cornelius Kendall; and if so, state whether you ever saw it before; if so, when, what it is?

Ans. I have seen this before; it is John Pendleton's directions how to make the aerated bread. He gave it to me at the time I made the contract with him.

Int. 110. Do you know the handwriting of John Pendleton?

Ans. I do.

562 Int. 111. Examine the letters now shown you, and state if you know in whose handwriting they are, and annex the same to your deposition, and state when you first saw the same.

Ans. The first is in John Pendleton's handwriting. It is a letter dated Cincinnati, June 16, 1864, addressed to me. I rec'd the same the day following, I think. It is marked Exhibit 2. The second is a letter addressed to me from New York, and is in the handwriting of John Pendleton, dated July 25, 1864. I rec'd it through the post, by due course of

mail. It is marked Exhibit 3. The third is a letter addressed to me from New York, July 14; the date is not given, but it was in 1864, and is in the handwriting of John Pendleton, with an enclosure of a list of aerated bread machinery. The letter is marked Exhibit 4, and the appended list is the list enclosed. I rec'd them by the due course of mail.

Int. 112. Did you ever procure any of the machinery named in Exhibit 4? and if so when?

Ans. I did procure that machinery, and I think it was in the month of August when it arrived.

Int. 113. In what condition was the machinery when it arrived?

Ans. In a bad condition.

Int. 114. What, if anything, did you do to remedy the machinery?

Ans. A portion of it I had to send to a machine shop; the balance my son, Cornelius and Yankee, with the aid of other machinists, put in working order.

Int. 115. Have you not used said machinery in your bussiness since?

Ans. I have, and continue to use it.

Int. 116. When did you commence making bread by the use
563 of this machinery?

Ans. Sometime in the month of September or 1st of October, or for part of it.

Int. 117. Of what use, if any, did you make of Pendleton's directions contained in Exhibit I?

Ans. I employed a man from Milwaukee, by the name of Weeks, who had worked at the business some two years or more, and gave him charge of this aerated bread with Pendleton's direction, and stated that he would be able to make superior bread with his knowledge and experience in bread making, with the superior quality of flour that I should give him, above that which they used in Milwaukee.

Int. 118. Of what use, if any, did said Weeks make of said Pendleton's directions?

Ans. He worked according to the directions, and no other that I am aware of.

Int. 119. How long?

Ans. I could not state the definite length of time, but my impression is from one to two months.

Int. 120. How long did Weeks remain in your employ?

Ans. I think it was not to exceed 60 days at that time.

Int. 121. What success had he in making the aerated bread?

Ans. Very poor; but occasionally he would make passable bread.

Int. 122. Who succeeded Weeks in making aerated bread?

Ans. I gave the charge of the bread to C. B. Ayres and my son Cornelius.

Int. 123. What success did Ayres and your son Cornelius have in making the bread?

564 Ans. Various; at first not good, but ultimately succeeded in making the best bread that I ever saw.

Int. 124. What direction did Cornelius & Ayre use when they commenced making the aerated bread?

Ans. John Pendleton's; contained in Exhibit I.

Int. 125. What success did they have while following those directions?

Ans. Very poor; the bread occasionally would be unsaleable entirely, being a perfect dead loss a great deal of it.

Int. 126. What use did they make of said Pendleton's directions at the time they made excellent bread?

Ans. I could not say how much use they made of it, but they both claimed that they had made a discovery, quite different [different] from Pendleton's direction, which let them into the secret of making good bread.

Int. 127. When did they begin to make their bread uniformly of good quality?

Ans. I think it was in the month of February, 1865, they made it immediately on the discovery of this new process.

Int. 128. How many barrels of flour did you manufacture per day, while Weeks was making bread?

Ans. From 2 to 4, I think.

Int. 129. How many per day did Cornelius & Ayre make for you in March, 1865?

Ans. All that they possibly could make, from 20 to 22 when the machinery kept in order, and could not supply the demand for the bread.

565 Int. 130. Was the business profitable? and if so, when did it first begin to be?

Ans. It was not profitable until February; I might say, it was very unprofitable until Feb'ry; but in February, when we began to make uniform good bread, it was quite or very profitable.

Int. 131. How did your expenditures for account of machinery compare with your receipts from the bread up to the latter part of February, 1865?

Ans. I run up to that time at a loss in expenditure on machinery, and losses on stock and work, to the amount of $4,000 or over.

Int. 132. Did you have an interview with John Pendleton in October, 1864?

Ans. I think it was in October that he came to my office, (1864.)

Int. 133. Did you say anything to him, at that time, about the aerated bread? and if so, what?

Ans. I did say something to him, and he said something to me. I stated to him my success had been very poor up to that time; that I did not get the machinery as promised, and when it did come, it came in bad order, and took a long time without his direction to get it in order and set it up, and that I had just got started and with poor success, and if forced to decide then I should decline taking the patent, but I was willing not only for my sake, but for his, to spare no expense, or pains, or means, to make it a success, provided I could have more time.

566 Int. 134. At the time you made the above statement to Pendleton, what, if anything, did he reply?

Ans. He said he would have been glad to have the question decided then, but wished to give me all the time necessary to fully satisfy myself, and to fully test its merits; then replied, go on and take your time, and do the best you can, and I will give you all the aid in my power to make it a success, and invited me to come with him to Rochester, where they were making very superior bread. He mentioned one or two other places where they were making good bread. Buffalo was one; there he thought I could get instructions that would be of great benefit to me.

Int. 135. Did he fix any limit to the time in which you might go on? if so, what?

Ans. He did not.

Int. 136. What, if anything, did he say about going on until December, or until the expiration of the six months?

Ans. Not one word; time was not alluded to.

Int. 137. Did he say to you at that time that the thing should remain in that way until December, and that he should not seek for a buyer until then; when his time was up; when the six months had elapsed, or words to that effect?

Ans. Not a bit of it; he never alluded to it?

Int. 138. Did John Pendleton ever, after that time, express any dissatisfaction with you at your delay in coming to a decision.

Ans. Never.

Int. 139. Did he ever, before the sale to Woodman, inform
567 you that he considered your rights under your contract with him at an end?

Ans. No; he never alluded to it to me.

Int. 140. Did you have an interview with John Pendleton at your office in Chicago on or about April 20, 1865.

Ans. I did.

Int. 141. What did he say to you at the last named interview? (Objected to.)

Ans. He asked me if I was ready to pay a note that he held against me; I replied that it was then five o'clock; that we had very little time to fix upon entire matters which I wished, and was ready to do. He then asked me if 8½ in the morning would suit me better. I told him it would; that I should be on hand, and ready to close up my matters with him. He replied, "I will be here in the morning, and bade me good afternoon; this is the substance of all that was said.

Int. 142. Did he then leave the office?

Ans. He did, after repeating to Cornelius that he should be there at the time.

Int. 143. Did he come back the next morning?

Ans. He did not.

Int. 144. When and how did you first learn that Woodman had bought the patent?

Ans. By the communication from Mr. Woodman, which I hold in my hand. I think it was about 4 o'clock in the afternoon. It was handed to me by Mr. Woodman's clerk, Wallace Smith. I annex it as exhibit 5 to my deposition.

568 Int. 145. Do you know C. L. Woodman's handwriting? If yea, is Exhibit 5 in his handwriting?

Ans. I do; and it is in handwriting.

Int. 146. May you not have received Exhibit 5 on the day of your interview with Mr. Pendleton, and after that interview?

Ans. I could not.

Int. 147. Why?

Ans. Because it was earlier in the day when I rec'd the document than it was when Pendleton called; and another reason I waited in the morning until 12 o'clock, or after, hoping to see Mr. Pendleton, according to promise. He, not appearing, made me a little anxious about his whereabouts. The document coming in afterwards showed me the cause of his non-fulfillment of his engagement.

Int. 148. Before you made your contract with Mr. Pendleton, and while talking about machinery, was anything said by Mr. Pendleton about a Mr. Bayley, of Cincinnati, who had some?

Ans. There was.

Int. 149. What?

Ans. He stated that Mr. Bailey had aerated bread machinery, which he thought he could get for me. I think he mentioned either by leasing or by buying; I think he mentioned both ways.

Int. 150. Did he say when he thought he could lease it or buy it for you?

Ans. He thought he could do it immediately on arrival.

569 Int. 151. Did you have any correspondence with Pendleton after December 14, 1864, about the patent right? If yea, state whether the letters purporting to be from Pendleton to you, after that date, and which are now in evidence, constitute his part of that correspondence.

Ans. I did have correspondence with him, and those letters are his part of the correspondence.

Int. 152. Did you ever make a tender to John Pendleton under your said contract with him? If yea, state when, and where, and what you said and did on that occasion.

Ans. I did make a tender on the 14th of June last. I showed him the contract, and Mr. Grant on my behalf read to him this paper marked Exhibit 6. He received of me the $5,35 tendered, and gave to me the six month's note I had in my hands, and I offered to him at the same time the $217 35 in U. S. currency, which he did not receive. I also had in my hand and tendered to him the six notes described in said paper Exhibit 6, the copies of which are as follows:

Here the witness introduced the six notes referred to, and the following is a copy of the same:

[$1,000 00.] CHICAGO, *December* 14*th*, 1864.

Six months after date I promise to pay to the order of John Pendleton one thousand dollars, with interest, at the rate of seven per centum per annum.

Value received.

O. KENDALL.

[50-ct. rev. stamp]

[$1,000 00.] CHICAGO, *December* 14*th*, 1864.

One year after date I promise to pay to the order of John Pendleton one thousand dollars, with interest, at the rate of seven
570 per centum per annum, payable annually until paid.

Value received.

O. KENDALL.

[50-c. rev. stamp.]

[$1,000 00.] CHICAGO, *December* 14*th*, 1864.

Eighteen months after date I promise to pay to the order of John Pendleton one thousand dollars, with interest, at the rate of seven per centum per annum, payable onnually until paid.

Value received.

O. KENDALL.

[50-c. rev. stamp]

[$1,000 00.] CHICAGO, *December* 14*th*, 1864.

Two years after date I promise to pay to the order of John Pendleton one thousand dollars, with interest, at the rate of seven per centum per annum, payable annually until paid.

Value received.

O. KENDALL.

[50-c. rev. stamp.]

[$1,000 00.] CHICAGO, *December* 14*th*, 1864.

Thirty months after date I promise to pay to the order of John Pendleton one thousand dollars, with interest, at the rate of seven per centum per annum, payable annually until paid.

Value received.

O. KENDALL.

[50-c. rev. stamp.]

[$1,000 00.] CHICAGO, *December* 14*th*, 1864.

Three years after date I promise to pay to the order of John Pendleton one thousand dollars, with interest, at the rate of seven per cent. per annum, payable annually.

Value received.

O. KENDALL.

[50-c. rev. stamp.]

I also had in my hand, and offered to him, the $1035 00 mentioned in said Exhibit 6. He refused to receive the money and the notes.

Int. 153. Was this tender made to John Pendleton before or after you filed your bill in the Circuit Court of Cook county against him, Dake and Woodman, for a specific performance of your con-
571 tract?

Ans. It was made before.

Int. 154. Did you at the same time make any tender under your contract to Joseph M. Dake? If so, state what you said and did on that occasion, and what said Dake said and did.

Ans. Mr. Grant read in my behalf to said Joseph M. Dake the paper marked Exhibit 7. I had in my hand, and offered to said Dake, the money and the notes mentioned in said Exhibit 7, which Joseph M. Dake refused to receive. The notes were executed and stamped by me, and I produce the originals to be copied into this my answer.

Here the witness hands to the notary the 6 notes, for the purpose of being copied into his answer, which is done accordingly, in the words and figures following, viz:

[$1,000 00.] CHICAGO, *December* 14*th*, 1864.

Six months after date I promise to pay to the order of Joseph M. Dake one thousand dollars, with interest, at the rate of seven per centum per annum.

Value received.

O. KENDALL.

[5-c. rev. stamp.]

[$1,000 00.] CHICAGO, *December* 14*th*, 1864.

One year after date I promise to pay to the order of Joseph M. Dake one thousand dollars, with interest, at the rate of seven per cent. per annum, payable annually.

Value received.

O. KENDALL.

[50-c. rev. stamp.]

[$1,000 00.] CHICAGO, *December* 14*th*, 1864.

Eighteen months after date I promise to pay to the order of Joseph M. Dake one thousand dollars, with interest, at the rate of seven per cent. per annum, payable annually.

Value received.

572 O. KENDALL.

[50-c. rev. stamp.]

[$1,000 00.] CHICAGO, *December* 14*th*, 1864.

Two years after date I promise to pay to the order of Joseph M. Dake one thousand dollars, with interest, at the rate of seven per centum per annum, payable annually.

Value received.

O. KENDALL.

[50-c. rev. stamp.]

[$1,000 00.] CHICAGO, *December* 14*th*, 1864.

Thirty months after date I promise to pay to the order of Joseph M. Dake one thousand dollars, with interest, at the rate of seven per centum per annum, payable annually.

Value received.

O. KENDALL.

[50-c. rev. stamp.]

[$1,000 00.] CHICAGO, *December 14th*, 1864.

Thirty months after date I promise to pay to the order of Joseph M. Dake one thousand dollars, with interest, at the rate of seven per centum per annum, payable annually.

Value received.

O. KENDALL.

[50-c. rev. stamp.]

Int. 155. How soon after your October interview with Mr. Pendleton did he leave town?

Ans. I think he left immediately, or the day following.

Int. 156. When did you next see him?

Ans. On the 20th of April last.

Int. 157. Had he, within your knowledge, been in Chicago in the interval?

Ans. He had not.

Int. 158. How soon after your interview of the 20th of April did he leave Chicago?

Ans. I could not state; his movements were mysterious me; I think it was a few days however. I sent to the hotel where he stopped
573 when he first came into the city, and found his baggage had been removed; my impression is that it was some two or three days afterwards. I saw M. Town, his agent, on the day last mentioned and inquired of him if he knew his whereabouts; he stated he did not.

Int. 159. When did you next see Pendleton, or hear of his being in Chicago?

Ans. At the time he gave in his deposition before Mr. Bishop; on or about that time. It was, perhaps, the 12th or 13th of June last.

Int. 160. What objection did he make, if any, to accepting your tender of the 14th of June?

Ans. He objected, stating he could not do it because he had sold to other parties, I think.

Int. 161. Did you show both Dake & Pendleton the contract when you made the tender?

Ans. I had it in my hand, and tendered it to them the same as I the money and notes, They refused to look at it.

Int. 162. How long have you known Joseph M. Dake?

Ans. Some 5 or 6 years; (6 or 7 perhaps,) since I first made his acquaintance.

Int. 163. Was there ever any trouble between you and Joseph M. Dake, about business matters before this law suit? If so, when?

(Objected to.)

Ans. Well, there was some trouble between Mr. Dake and myself during the time he was a partner, and some also while he was a partner of my son's.

Int. 164. Had there been any suspension of friendly inter-
574 course between you and Joseph M. Dake previous to January, 1865?

Ans. There had been; about the time he went out of the business

we had some words. I charged Mr. Dake with corrupting the men, of inducing them to drink, and of using profane language, setting an example himself. He was very much excited at the time.

Int. 165. When did your next interview take place after this unpleasant one?

Ans. I met Mr. Dake on a variety of occasions and in different places, but a very few words ever passed between us until sometime in February last, when he called at my office and wished a private interview with me; he seemed very friendly.

Int. 166. How did he introduce the interview last named?

Ans. He stated he wished to speak to me privately, were the first words. I invited him into my front office. He then stated he had come to offer me his services, stating that he was then with Mr. Woodman, but Mr. Woodman's business was not sufficient to justify Mr. Wood man's paying him a salary, and he had so stated to Mr. Woodman, and with Mr. Woodman's approbation he had come to offer his services to me.

Int. 167. What, if anything, did he say about the state of unpleasantness that existed between you?

Ans. He said he knew there had been some feeling and words between us, but he wished byegons to be bygons. I replied that I did not wish to entertain any unkind feelings towards him or the worst enemy I had in the world. I stated further, that it was not in my nature, nor consistent with my religion to do so.

575 Int. 168. Did he say anything further at this interview about entering your employ? If so, what?

Ans. We sat together for some little time and had quite a pleasant chat. He remarked, Mr. Kendall, I think I can do you some good. I have friends as well as you, and I have money which I have no use for at present, and of which you can have the use if you wish. I remarked in regard to his services, that I had no definite answer to give him, but I would think of it and see him again. This was [was] about all that occurred at this interview.

Int. 169. When and where did you next see him?

Ans. At my office, I think. He called again for the same object. The interview was in the same room, the front office. He wished to know if I had come to any conclusion in reference to his proposition. I told him I had not.

Int. 170. State what further was said on the occasion last mentioned by you and by him?

Ans. He renewed his proposition to go into my service, proposing to loan me money, and fixing his salary at $2,500 per annum. On this occasion he took particular pains to inform me that he never intended to go into the baking business again, stating as a reason his health was poor, and he was incompetent, and had not the bodily strength or ability formerly. He stated that on account of my extensive business, and being familliar with my business, he felt more at home there than he did with Mr. Woodman. He stated that he wished to have a place that he could call home, so as not to

576 loaf; this is in substance about what was said.

Int. 171. Did he ask you any questions about your business? If so, what.

A. He did ask me questions in regard to my business; he made particular inquiry about the extent of the cracker business. I replied the cracker business was never better. He also inquired about the aerated bread; how we were gettingalong with that.

Int. 172. What reply did make to his inquiry about the aerated bread business?

Ans. I replied that now I had made it a perfect success. It was or had been a failure for a long time; that I had now got something in the baking business that no other baker could get from me, meaning aerated bread. I stated to him about the amount I had been baking as long as I made it failure, and also the amount per day that I had made since I made it a success. I stated to him that I was baking about 20 barrels per day. He asked me how it was paying. I stated very well, first rate. He asked me how much it paid per barrel. I then took my pencil out of my pocket and stepped to the northwest marble counter, took a piece of brown paper, put down the price of the flour, the cost of manufacturing, and then the number of loaves of bread that I got from a barrel of flour, and the price that I sold the bread for; then I subtracted the cost of the bread and its manufacturing from what I sold it for, he looking over all the time, over my figuring. I was a little surprised at the result of the figures
577 and asked him if I was correct. He said I was. The result showed at that time about $4 per barrel profit. I then figured how much it would be per day at that rate, and also how much per month and year, and found it quite a large sum. He remarked it was the best business, and he'd rather have it than any other business in the city; this is in substance the amount of the figuring. We examined the quality of the bread. I showed him some in several baskets, and cut open a loaf; he pronounced a very superior article. I also showed him the machinery where the bread was made; he gave but little attention to that however. We then got into conversation with my son, and I think I left the room. He congratulated me upon the business that I had, and the success that it was going to be; did it in a very pleasant manner indeed.

Int. 173. Was anything said on the occasion last referred to about your contract with Pendleton? if yea, what?

Ans. We had some 3 or 4 interviews, and I cannot say on which of these interviews the conversation occurred.

Int. 174. Was anything said about said contract at any interview about that time? if yea, by whom and what?

Ans. On those occasions Mr. Dake was very affable and very agreeable, and got into my confidence by professing that he wished to do me good and never go into the baking business under any circumstances, he being familiar with the baking business for 4 or 5 years. I talked with him very freely about my business, and partic-
578 ularly about the aerated bread and the patent under which I was working, and how I got it; stating that I was very cautious in going into the enterprise after hearing of the many failures in

different cities in aerated bread. I was not willing to risk much money until I had given it a thorough trial. I stated to him that I only risked $500 to make a trial; and stated to him that I was more shrewd than many men who had gone into the business and risked large sums by making full purchase of the right at once. I think I enumerated and mentioned some places where they had bought the right and failed. I stated that I had bought the right conditionally; that I was to pay $500 and have 6 months to test it in, and $600 more if I elected to take it at the expiration of six months, for the sole right of the county during the continuance of the patent.

Int. 175. Did you tell him whether or not the 6 months, during which you were to exercise your election, had expired?

Ans. I don't recollect of saying a word on that subject.

Int. 176. Did you say whether or not the contract was then subsisting?

Ans. I stated to him under what contract I was working; but there was nothing said about the time.

Int. 177. Was Pendleton's name mentioned at either of the 3 conversations? and if yea, by whom, and in what connection?

Ans. His name was mentioned I think by both parties, and by myself particularly, as the party of whom I had bought
579 the right, or rather with whom I had made the contract.

Int. 178. How long after your second interview with said Dake did the 3d occur?

Ans. I think it was about a week; there was more time elapsed between the 2d and 3d interview than between the 1st and 2d; it may have been 2 weeks, I cannot state positively.

Int. 179. In figuring for Dake the cost of manufacturing aerated bread, did you itemize, or only give the total cost?

Ans. I gave item for item.

Int. 180. Did Dake, at either of the interviews you have named make any written estimates of the cost of making aerated bread, or did he make any figures showing the cost?

Ans. I never saw Mr. Dake make any estimate or any figures in regard to the aerated bread.

Int. 181. Did he as to the cracker business?

Ans. I have no recollection of seeing Mr. Dake on these occasions make any figures or any estimates in regard to the cracker business, nor on any other occasion, after he went out of the company.

Int. 182. Did you say anything at either of said interviews as to your intention of fulfilling the contract with Pendleton? if yea, what?

Ans. I don't think there was anything said; the subject was not spoken of at all.

Int. 183. Did you, at either of said interviews, propose to go into partnership with Dake?

580 Ans I did not.

Int. 184. Did you ever authorize your son Cornelius to propose a partnership to Dake?

Ans. Never.

Int. 185. Did you, at either of said interviews, propose to Dake that he should furnish $15,000, and take an interest in your business?

Ans. No, on no occasion; I had no intention of the kind; I had declined taking him in as a clerk, and on his protestation that he did not wish to go into business; it never came into my head. When he proposed his services, and to loan me money, I stated to him that I had had two first rate offers for partners, (and gave him the name of one,) with a large amount of capital. I told him that I had declined them both, and I did not think I should need his money, nor could I accept his services without discharging some other clerk.

Int. 186. At the second of said interviews with Dake, did he estimate the amount you could make in a year out of the aerated bread and cracker business? and did he advise you not to repair your building, and not to take a partner?

Ans. He did not make any estimate within my recollection. On some occasion Mr. Dake advised me not to repair my building, and not to take a partner, or the subject was talked over. I spoke about raising my building.

Int. 187. Did you volunteer your information about your business? or did you give it in reply to questions asked by Dake?

581 Ans. He drew it out of me by his questions.

Int. 188. Did you say anything at either of said interviews about your early difficulties in making bread? if yea, what?

Ans. I did talk over with him the trouble I had had in making good bread at the start. I told him I had had a good deal of poor bread and many losses in experimenting.

Int. 189. Did you say to Dake at either of said interviews that you had not made up your mind as to his proposition, for you had been thinking of marrying a wealthy lady in town, and that if you did, you expected to get money enough with her, so that you would need no assistance from him or any one else? and did you then ask his advice in the matter, and did he tell you to marry the woman, and did you then say that that was much as the Scriptures said—that it was not good for man to be alone—and that you thought you should marry the woman?

Ans. I never made any such rediculous, foolish, and absurd statements to Mr. Dake.

The further taking of these depositions was then continued to August 29, 1865, at 10 o'clock a. m.

AUGUST 29, 1865, 10 *a. m.*

Parties present by their counsel, and the taking of these depositions proceeded with as follows, viz:

Int. 190. At the first of your said interviews with Joseph

582 M. Dake, at your store, did you tell him that when you first commenced using the aerated bread machinery it was out of order, that you could not make good bread? and when you had it repaired in good order, you had no difficulty in making good bread, or words to that effect?

Ans. I made no such statement to Mr. Dake.

Int. 191. Did you at the second of said interviews?

Ans. No.

Int. 192. Did you at the third?

Ans. I did not.

Int. 193. Did you ever?

Ans. Never to my recollection.

Int. 194. Did you say anything about Weeks at either of said interviews? if yea, what?

Ans. I think I did speak of Weeks. I stated that I had employed him when I first commenced it, supposing him to be competent, by his experience in the buisness, but after trial, was satisfied he was not, and discharged him.

Int. 195. Did you tell Joseph M. Dake, at either of said 3 interviews, that Cornelius and Yankee had assisted in reparing the machinery, and had got it tight? and that Yankee was then making good bread, or words to that effect?

Ans. I do not recollect of saying anything of the kind to him; but I may have done so. It is a fact that Yankee and Cornelias did help put the machinery in order, and did make good bread ultimately.

Int. 196. When you showed J. M. Dake the bread, and cut
583 a loaf open, did you not say to him that this was a thing no one could get from you, or words to that effect?

(Objected to, because suggestive and leading.)

Ans. I did say such words to Mr. Dake; but whether it was on that occasion or on one of the other 3 interviews, I can not say; my impression is that it was on that occasion.

Int. 197. Did you tell him that before Woodman bought the patent?

Ans. I did.

Int. 198. When Mr. Dake offered to advance you money, as you have stated, what, if anything, did you say about not wanting his mouey unless you put the building up to grade?

(Objected to as being suggestive and leading.)

Ans. I said to Mr. Dake that I did not think I shu'd need any money from him, as I had sufficient, or could get aid from my banker all I wished to carry on my business; but if I put my building up to grade, and made the improvements contemplated, I should probably need more money.

Int. 199. Did you propose a partnership to J. M. Dake in your bakery in March last?

Ans. I did not.

Int. 200. Did you any where in March last?

Ans. I did not; and had no inclination to do so.

Int. 201. Did you tell Joseph M. Dake at either of said 3 interviews that you had thought of taking a partner, and had offers from 1, 2, or 3 parties to put in $15,000 capital? that they were
584 very good men, but that they did not understand the business, and you had declined to take them on that account, or words to that effect?

Ans. I did not tell Mr. Dake that I had thought of taking a part-

ner; but I did tell him that I had two offers from very good men. I gave him the name of one party, and stated that the other was a man of large wealth; but I had declined them both, because I did not wish a partner for the time being. This is in substance what I said to him, and those are the reasons that I gave for not wishing to take a partner, and gave no other, to my recollection.

Int. 202. Did you assign as a reason for not taking a partner that the men who offered did not understand the business?

Ans. I did not.

Int. 203. Did you assign as a reason for declining Mr. Skinner's proposal for a partnership that you did not like him?

Ans. I gave no such reason.

Int. 204. Have any men left your employ recently? If so, when, and how many?

Ans. Men have left my employ since Mr. Dake started the aerated bread business, or about that time, and 1 or 2 before. I think, perhaps, from 6 to 8, all told.

Int. 205. State, if you know, where they are now working.

Ans. With Dake & Woodman.

Int. 206. Give their names, and the duties they performed while with you.

585 Ans. C. B. Ayre, an engineer, and the aerated bread foreman; John Rafferty, a receiving and delivery clerk and porter; two Smiths, brothers, engineers; the oldest one had become skilled in making the aerated bread; Thomas Beresford, who had charge of the ovens for aerated bread; Mike Sorragan had charge of the oven for baking crackers; David O'Shay, who was the foreman on soft bread; James Brimner, a man to whom I sold my horses and wagons, which had been used in supplying my customers through the city, and a man with whom I had made a contract to use these teams for supplying my customers exclusively, by paying him a certain percentage on the sales. This contract was made, I think, sometime during the month of March, 1864, with Brimner.

Int. 207. Did you discharge these persons from your employ?

Ans. I did not.

Int. 208. Had you a written contract with any of these persons to labor for you? If so, produce the same.

Ans. I had with C. B. Ayre, duly executed by us, and which I here produce.

The witness here hands to the notary a paper writing, which is in the words and figures following:

This agreement, made this 8th day of May, A. D. 1865, between Orrin Kendall, of the city of Chicago, county of Cook, and State of Illinois, party of the first part, and Cyrus B. Ayre, of the city, county, and State aforesaid, party of the second part, witnesseth: That the said that party of the second part, for the consideration herein-

586 after mentioned, promises and agrees to and with the said party of the first part to do and perform, in a good and workmanlike manner, the same work, labor, services and duties in and about the business

of the said party of the first part, by him performed for the last three years in said business, for and during the full term of one year from the date hereof, and that he will use the like care and skill in the performance of said services and duties. And the said party of the first part, in consideration of the premises, promises and agrees to and with the said party of the second part to pay for such labor and services the sum of forty dollars for each and every week, at the close thereof, during the period aforesaid.

O. KENDALL.
CYRUS B. AYRE.

[5c. rev. stamp.]

Direct examination closed.

Cross-examination.

Cros-int. 43. Did you have a written contract with James Bremner?

Ans. A written contract was drawn up by my book-keeper, Mr. Coates, but it was destroyed. I think it was executed; Brenner says it was not. It was left in the hands of the book-keeper, with my signature, I am confident, with instructions to have him get Bremner's signature when he came in to settle.

Cross-int. 44. How do you usually hire the men employed by you in the baking business? by the year, by the month, by the
587 week, or by the day?

Ans. The usual way is by the week.

Cross-int. 45. Is it customary to make written contracts with the men so employed?

Ans. It has not been the general rule, but there have been exceptions.

Cross-int. 46. How many men are now in your employment, who had formerly worked for Woodman?

Ans. I cannot say. I believe some of my cake men formerly worked for Woodman, on the north side. I can say one I know formerly worked for him, before the baker's strike; something over a year ago. This man might have worked for others before he came to me, and after he left Woodman; at all events, he was out of a job, and applied to me for one. Two others, who formerly drove bread waggons for Woodman, applied to me for a job, stating that they had left Woodman in consequence of Bremner taking a contract for supplying his customers. I took them, and they now are at work, driving two of my wagons.

Cross-int. 48. Have you any other men in your employment who have formerly worked for other bakers in this city? and if so, how many?

Ans. I don't think of any names. I don't know that I have. I may have; they don't occur to me. If I have, they came to me after they had left the employ of other bakers, as I have made it an invariable rule never myself, with my consent, hired journeymen from other boss bakers in the city.

588 Cross-int. 48. Have you entered into a combination with the other boss bakers to prevent the journeymen from seeking such employment as they please?

Ans. No.

Cross-int. 49. Does your rule prevent you from employing any man who desires to enter your service, because he is then working for another baker?

Ans. It does not without consultation with the party for whom he is working.

Cross-int. 50. Did you consult with Woodman as to whether you should employ Perry, before you agreed to take him?

Ans. I did not.

Cross-int. 51. Did not Perry continue to work for Woodman for a day or two after he had agreed to work for you?

Ans. Not to my knowledge. He stated he was out of employ, and was ready to go to work, and I have no knowledge of his doing a minute's work after that for Woodman.

Cross-int. 52. Did you see John Pendleton during the time he was in Chicago, last April, after he first called on you on the 20th of April?

Ans. I did. I saw him the next day, late in the afternoon, after waiting all the forenoon for him to fulfill his engagement with me at Mr. Woodman's office.

Cross-int. 53. Did you call at Woodman's place of business on the evening of the 20th of April?

Ans. After receiving that note, almost immediately I called at his office, which I think was on the 20th of April. There was
589 some discrepancy in the dates of these different papers; whether it was in Mr. Woodman's note or in the assignment I cannot say. My impression is that the mistake was in the assignment.

Cross-int. 54. Did you call at Woodman's the next morning at about 9 o'clock, where you had an interview with Mr. Pendleton, and remain until about 12 o'clock?

Ans. I called the next day at Mr. Woodman's office, after remaining all the forenoon at home waiting for Mr. Pendleton. It was in the afternoon that I called to inquire of Mr. Woodman if he knew where Mr. Pendleton was. He stated that Mr. Pendleton was in his back office. I then and there had an interview with Pendleton?

Cross-int. 55. Do you mean to say that you did not call at Woodman's or see Mr. Pendleton during the forenoon of the 21st of last April?

Ans. I do mean to say that I have no recollection of calling in the morning of the 21st to see Mr. Woodman. I certainly did not see Mr. Pendleton in the morning of the 21st.

Cross-int. 56. You have stated that you saw Mr. Pendleton in the afternoons of the 20th and 21st of April last; did you see him at any other times during his visit to Chicago last April? and if so, when, and where?

Ans. My impression is that I did see Mr. Pendleton after that inter-

view at Mr. Woodman's, on the 21st; I think on the following day, the 22d, in the street; I think I saw him coming from Mr. Woodman's towards my bakery; I think he stopped and talked with me and my son for a few moments on the sidewalk; I don't recollect of seeing him after that at that time.

Cross-int. 57. Did you have any other persons than Weeks and Yankee and your son Cornelius engaged in making aerated bread before the 20th of last April.

Ans. I did.

Cross-int. 58. Whom?

Ans. Quite a number of assistants, and Mr. Dunn, I think, worked on the night watch in making aerated bread, as foreman, and before that time.

Cross-int. 59. Did you work at it yourself?

Ans. I did not.

Cross-int. 60. Did any of these persons you have named, except Weeks, Yankee, Cornelius and Dunn, have charge of the making of the dough?

Ans. I don't recollect of any one else having charge; they may have been directed in kneading the dough.

Cross-int. 61. How do you know that Weeks followed the directions left by Pendleton, marked Exhibit 1?

Ans. He stated to me that he had worked according to those directions in Milwaukee, and knew of no other rules to work by.

Cross-int. 62. How do you know that Yankee followed said directions at first?

Ans. Because I gave him these rules, and he had no other rules to work by (either my son or myself gave them to him) and he stated that he worked under those rules until he was satisfied that he could not succeed in making good bread by those rules.

591 Cross-int. 63. Which one of these workmen finally succeeded in regularly making good bread?

Ans. It was the union of the skill and talent of my son and Yankee.

Cross-int. 64. Do you know whether your son Cornelius ever succeeded in making any good aerated bread?

Ans. I know he was the leading and master spirit in succeeding in making good bread.

Cross-int. 65. What were the discoveries made by your employees which resulted in producing good bread?

Ans. I don't know as I can give the real merits of the discovery; I was satisfied when they succeeded in making good bread to leave the whole discovery to them.

Cross-int. 66. Can you describe the process by which aerated bread is made?

Ans. I cannot in full; I can describe the process so as to give an idea of how the bread is made?

Cross-int. 67. You may give such description as you can.

Ans. In the first place we take a barrel of flour and run it through the hopper into the seive, then into the kneader; the water and salt

are put into the kneader; the machinery is then set into motion until the dough is properly kneaded; then the gas is pumped into the kneader and properly worked through the dough by the action of the arms in the kneader; the dough is then drawn out through a stop cock or valve into pans, and immediately placed into the oven.

Cross-int. 68. What is the difference between the process that you have described and the instructions of Mr. Pendleton?

592 Ans. I do not know that there is any.

Cross-int. 69. Do you know the proportions required of flour, salt, and water?

Ans. I have not charged my mind with those proportions, so that I can state them here.

Cross-int. 70. Can you state the quantity of gas admitted to the kneader?

Ans. I cannot comprehend the question. You can admit more or less gas into the kneader for different objects. Different bakers use different quantities of gas, as I am informed.

Cross-int. 71. Do you know how long a time is required to knead the dough?

Ans. It depends upon the number of revolutions per minute of the arms of the kneader.

Cross-int. 72. How long would be required to knead the dough if 160 revolutions were made per minute?

Ans. I do not profess to understand the thing perfectly, and would not pretend to state; we take from 3 to 10 minutes in our establishlishment kneading our dough.

Cross-int. 73. I understood you to state that C. B. Ayre and your son, Cornelius, both claimed to have made important discoveries, by which they could make good bread. Do you know anything about what such discoveries were, or how they were made, except from their statements?

Ans. I know it from the work that they produced after and before they had made the discoveries.

Cross-int. 74. I suppose you mean, by your last answer,

593 that they did not succeed at first in making good bread, but afterwards did, and that from this fact, in connection with their statements, you concluded that they had made the discoveries. Is that correct?

Ans. I do suppose by the fact they did not make good bread at first, but afterwards did, that they had acquired a certain knowledge and skill which constituted the discovery by which they made good bread.

Cross-int. 75. Do you know what the discoveries claimed by them were?

Ans. I do not in full.

Cross-int. 76. Do you know what they were, or anything about them, otherwise than by their statements?

Ans. Nothing more than the demonstrations in the quality of the bread produced.

Cross-int. 77. Do you state, under your oath, that you never pro-

posed to Joseph M. Dake to form a partnership with him at any time since the 1st day of last February?

Ans. I do so state under oath.

Cross-int. 78. What is secured by the patent described in your contract with John Pendleton?

Ans. All the patent can confer.

Cross-int. 79. What principle, in the making or the raising of dough, is covered by the terms of said patent and the specifications thereto attached.

(Objected to on the ground that the patent and specifications are the best evidence.)

Ans. The principle is in the patent; I cannot give a descrip-
594 tion of it.

Cross-int. 80. Have you made any aerated bread without using said principle so secured by said patent?

Ans. I have, up to this time, worked under said patent and according to its principles.

Cross-examination closed.

O. KENDALL.

The further taking of these depositions was continued to August 30, 1865, at 10 a. m.

AUGUST 30, 10 *a. m.*

Parties present, when the further taking of these depositions on the part of the defendant was, by mutual agreement, continued from day to day, at the same hour and place, until Sept. 20, 1865, when the said parties being present by their said counsel as aforesaid.

Deposition of Hugh Templeton.

Hugh Templeton, a witness of lawful age, being produced and sworn on the part of said defendant, in answer to the several interrogatories testified as follows, viz:

Interrog. 1. What is your age, residence, and occupation?

Ans. My age is 34 years; my residence is Chicago; my occupation a baker.

Interrog. 2. Do you know the parties to this suit, plaintiff and def't? and if so, how long have you known them?

Ans. I do know them; I have known Mr. Kendall about 8 years; I have known Mr. Dake about 5 y'rs.

595 The further taking of these depositions was then adjourned to Sept. 21, 1865; same hour and place.

SEPT. 21, 1865—10 *o'clock a. m.*

Parties present as aforesaid. Examination of same witness continued as follows, viz:

Interrog. 3. How long have you been a practical baker, and where, and under what firm?

Ans. I have been a practical baker 16 years; 8 years in Scotland, 5 years in Chicago, in business for myself, and 3 years in the firm of Thompson & Templeton.

Interrog. 4. Do you know anything about the process for making aerated bread, included in the patent in dispute in this case; and if yea, how long have you known about it?

Ans. I do not know anything about the process.

Interrog. 5. Do you know anything about the patent? If yea, how long?

Ans. I do know something about the patent; I have known it for 3 years.

Interrog. 6. Did you ever converse with Charles L. Woodman about the patent, or the process thereby secured before the 20 April, 1865? If yea, when and where?

Ans. No, sir.

Interrog. 7. Did you ever talk with said Woodman before that date about the manufacture of aerated bread?

Ans. Yes, sir.

Interrog. 8. When and where?

Ans. In April last, as near as I can recollect; in our store.

Interrog. 9. What was said by you, and what by said Wood-
596 man on that occasion?

Ans. I remember of saying to Woodman, if Mr. Kendall did not make better bread it would be a bad job for him. Mr. Woodman said he thought it would ruin Mr. Kendall, and the soone the aerate bread was out of the way the better for us.

Interrog. 10. About when did this conversation take place?

Ans. In the month of April, 1865.

Interrog. 11. Did you know before the 20th of last April that John Pendleton had anything to do with the patent right?

Ans. Yes.

Interrog. 12. When did you first learn that fact?

Ans. In the month of September, A. D. 1864.

Interrog. 13. From whom?

Ans. Mr. Pendleton.

Interrog. 14. Were you and Charles L. Woodman present at any conversation before the 20th of last April, in which Mr. Pendleton was referred to?

Ans. Not to my knowledge.

Interrog. 15. Were you and Charles L. Woodman present at any conversation before the 20th of last April, in which Mr. Kendall's contract with Pendleton was referred to?

Ans. Not to my knowledge.

Interrog. 16. Do you know whether or not C. L. Woodman knew of said Kendall's contract with said Pendleton before the 20th of last April?

Ans. No, sir.

Interrog. 17. Why did you not buy the patent right three years ago?

597 Ans. I was informed it would not pay.

Interrog. 18. Did you investigate the matter? and if so, how much?

Ans. I inquired of Mr. McKinzee, and practical mechanic and oven builder in New York, and he wrote me not to have anything to do with it, as it was a failure in New York. I then gave up all thought of it.

Interrog. 19. Didn't you have a conversation with John Pendleton about the patent at about the time he made his contract with Mr. Kendall?

Ans. Yes, sir.

Interrog. 20. Did he then offer you the patent right for Cook county?

Ans. I don't remember of his offering us the right for Cook county. He told us it would be a good thing, and he was sure it would be a success.

Interrog. 21. Did you propose to buy at that time?

Ans. No; I had not made my mind up to have anything to do with it.

Interrog. 22. Did you know when Mr. Kendall commenced making aerated bread?

Ans. Yes.

Interrog. 23. What success did he have at first?

Ans. Very poor.

Interrog. 24. Was not his want of success the subject of remark at bakers meetings, which you attended at about that time?

Ans. Not to my knowledge.

Interrog. 25. How did Mr. Kendall's later efforts in making bread compare with his earlier ones?

Ans. A great deal better, because he improved on it.

598 Interrog. 26. Did not you and your partner, Mr. Somerville Thompson, subscribe and swear to an affidavit in this case? and if yea, did you, and do you now, believe the statements of said affidavit to be correct?

Ans. Yes, sir.

Direct examination closed.

599 *Cross-examination.*

Cross-int. 1. Has not C. L. Woodman told you since the 20th of April, that he was surprised when he saw Mr. Pendleton, to find that Mr. Kendall had let this matter go in the way he did, and left it open for any one to purchase.

(Objected to.)

Ans. Yes, sir.

Cross-int. 2. Might not the conversation alluded to between yourself and C. L. Woodman, that you say took place in the month of

April last, in regard to the failure of the aerated bread, been during the fall or winter previous to that month?

Ans. Yes, sir.

HUGH TEMPLETON.

Cross-examination closed.

Sworn before me this 21st day of September, A. D. 1865.

O. R. W. LULL,
Notary Public.

The further taking of these depositions was, by mutual agreement, continued until the 22 Sept., 1865; same hour and place.

SEPT. 22, 1865—10 *a. m.*

Parties present as before. The further taking of these de-
600 positions was, by mutual agreement, continued from day to day at the same hour and place, when on the 21st day of September, A. D. 1865, at the same hour and place, the parties present by their respective attorneys as before. the said depositions were declared closed on the part of said defendant before me said notary.

O. R. W. LULL,
Notary Public.

601 Direct examination closed.

I, O. R. W. Lull, a notary public in and for the city of Chicago, in Cook county, in the State of Illinois, do hereby certify that the above depositions were taken before me by stipulation of the said parties. through their solicitors; that the same were commenced as noted and continued from time to time as noted until their close; that the said parties, by their respective solicitors, were present at the taking of the same; that the interrogatories and cross-interrogatories were propounded by the said complainant and defendant by their said solicitors, and the answers reduced to writing in their presence by the undersigned; that the several witnesses were sworn, prior to giving their said depositions, to speak the truth, the whole truth, and nothing but the truth. in the said matter in issue, so far as they should be interrogated thereto, and that the said interrogatories, and the several answers thereto were read over to said witness respectively, and they were then duly sworn to the truth thereof.

In witness whereof, I have hereunto set my hand and notarial seal this 30th day of August, A. D. 1865.

[SEAL.]

O. R. W. LULL,
Notary Public.

[5 ct. revenne stamp.]

602 *Exhibit* 1.

1 qt. acid.
2 " marble dust.
" water.

It is best to use two kinds of flour, say 1st and 2d quality. The quantity of water must depend upon the strenth of the flour; it extends from 8 ozs. to 13 ozs. to the lb. of flour. It is best to put in the water, with the salt dissolved in it, first, then the flour. After the cover is tightly closed admit the gas, and whilst you are raising the pressure on the kneader, set the arms in motion to mix. It should knead in about twenty minutes; motion about 40 revolutions per minute. The pans with the dough should be placed in the oven as early as possible. The amount of salt used by us is 52 ozs. to the barrel; the pressure is anywhere between 90 lbs. and 150.

Ex. "2."

CIN'TI,—— *ne 16th*, '64.

O. KENDALL, Esq.

D'R SIR: I was at the depot at the arrival of the Chicago cars, with the hope of meeting you, but I suppose too much business prevented you. Finding you did not come, I thought it was time to see Mr. Bailie and deliver your letter, with some trouble I found him, but to no purpose; he declined being neighborly; would not hire, and declined selling unless altogether. After a good deal of discussion, I convinced him that it was not necessary to have two kneaders to make his set complete, and he consented to sell one, but only the first one
603 that was made, that one he would take one hundred and seventy-five dollars for (it cost them $160.) Upon examination, I found it to be one of the first made and quite imperfect, and by no means the article for you to commence with. Upon his refusing totally to name a price for the other alone, I left him, concluding that he was rather impractible, even for these times; the one he offered me will hold but 170 lbs. of flour. The Bread Co. will spare you a lot of tins, sufficient I hope, with my forty-two, to serve with your barrel mixer. If they have got their two barrel up in Rochester, they would have a one out of use. I will leave here to-morrow night and try to obtain it; if can succeed, it will be much better than anything that can be done here. Before leaving I shall give a good search for a gas generator. I am happy to say that the Aerated Bread Co. are very busy, and meeting with a constantly increasing demand. I requested Mr. Towne to see you in reference to Bogart's assignment to Dr. Parker, which we forgot at the last moment. It will be necessary for me to return it to the doctor as it is his title to other portions of the patent. Will you oblige me by seeking some safe opportunity of sending it to me. With best regards to Mr. Cornelius and the two gentlemen in your office,

I remain, very truly, yours,

JNO. PENDLETON,
No. 4 West 22d St., New York.

604 *Exhibit* 3.

NEW YORK, *July 2d*, '64.

O. KENDALL, Esq.

D'R SIR: Although far from having any strength to give to business matters, I must try and write you a letter. On the 16th, when I wrote you I should leave for the east that evening, I met with a friend from Louisville, who told me that there had arrived there from the army down the river a large bread making apparatus. From his description I at once supposed that it was the one I had furnished to Mr. Geo. B. Fields for Grant's army. I thought we were in great luck as that fit-out contained every thing we wanted, and I had a considerable claim upon it. I took the first chance down, to find, after much delay and search, that it was a parcel of old trash, made up of movable ovens, French wooden kneaders, and other worthless articles. I returned as early as I could, but the 3 days occupied with this were exceedingly hot ones, and I found myself attacked with a bad diarrhœa, owing to the changes of weather I had gone through and the exposure in travelling. Nevertheless on the 20th I set out for Buffalo, where I arrived on the 22d, very much broken down. I had every hope that I could obtain from Fuller the one-barrel machine which had been removed at Rochester, and the 2 barrel substituted; but Mr. F. informed me that in consequence of the great demand for brown bread, they had concluded to put it up—the single-barrel—and work it exclusively for that purpose. At this
605 point it became necessary that I should put myself in the hands of a doctor, who, without curing me entirely, enabled me to take the road again on the 28th, and I got home, only to fall back by relapse, which I am now endeavoring to get out of. Here I found your letter of June 18th, enclosing Dr. Parker's title, and a request that the kneader should be for 2 barrels instead of one; this I am afraid will be difficult. I have heard that Mess. Church & Foster will sell one of 1 barrel; and I have written to other parties on the subject, but as yet there is no reply. I cannot order one, as it could not be obtained in a month, the founders are so busy. There are chances yet from other quarters, but I should like to hear from you again.

Very truly, yours,

JNO. PENDLETON.

The doctor thinks I may get out by the 5th.

Exhibit 4.

NEW YORK, *14th July*.

O. KENDALL, Esq.

DEAR SIR: We have been more than a week waiting for the return of Mr. W. K. Marion from the country, where we have tried unavailingly to reach him by letter for several days. He is this moment arrived, and I have obtained the enclosed list of a portion of his fix-

tures at Pittsburg, Penn. Previous to his arrival his father
606 was quite sure that he, (the son) had a double barrel kneader, but it appears not; he never had.

Although too feeble myself, I have through my friends made a wide effort to obtain one of the kind you desire, but without success. Mr. Marvin describes the one barrel as being a very superior one. holding more than a barrel, but how much more he is unable to say. The small things, guages and pans, he says he will sell you at a very low price, if you want them. He also says that if you want any of these thinges, you can have them forwarded at once by addressing his nephew at Pittsburg, directing him to send them forward. He will write to him to-day, directing him to deliver to your order any or all of these things without delay, and the settlement can be made here afterwards. In regard to the list, I can only remark, that if you should adopt the Cincinnati method of making gas, you will not require those expensive generators, although, from his description, I judge they are superior things of their kind. The receivers are two iron chambers, with no lead linings lying alongside of the generator, to accumulate the gas in, and of no particular use unless in connection with the generators.

Mr. Latta agreed with me before I left Cin'ti, that he would pack up a lot of his own pans with 42 of mine, and send them to you in the course of a few days. I hope he has done so. If not, a line directed to A. B Latta, at Cin'ti, will, no doubt, obtain them at once.

In conclusion, I am obliged to say that I am, as yet, by
607 no means in decent health The doctor attributes my delay to venturing out too early.

Please let me hear from you. I hope you succeeded at Detroit.

Very truly, yours,

JNO. PENDLETON.

Exhibit 4.

List of aerated-bread machinery for sale by W. K. Marvin, 265 B'way, New York. Lead, ¼ inch.

2 iron generators, 60x18, ea.	250
2 " receivers, 60x18 ea.	60
1 gas pump	150
1 single-barrel kneader	150
1 quarter-barrel "	85

Vacuum and pressure guages; large and small pans.

Orders addressed to S. S. Marvin, Pittsburg, Pa., will be attended to at once.

Exhibit 5.

CHICAGO, *April* 20, '65.

Mr. O. KENDALL, Esq'r.

DEAR SIR: I have this day purchased of Mr. John Pendleton his patent for Cook co. for making his aerated bread, and shall com-

mence to bake it immediately; and if you would like to dis-
608 pose of the apparatus which you have been using, I will purchase it at a fair price.

Yours, truly,

C. L. WOODMAN.

Exhibit 6.

To JOHN PENDLETON:

On behalf of Orrin Kendall, and as his agent, I tender you $535, being am't of note of $500 and one year's interest, at 7 per ct., given on the first payment on the contract I hold in my hand, and here show you, between you and Orrin Kendall, of June 14th, 1864, for the sale of the patent right for Cook county of an "Improvement for raising dough," for which patent right letters patent were issued March 9th, A. D, 1858, to James Perry, Daniel Fitzgerald, and Horatio Bogart, and I demand the surrender of said note. (Get his reply, and then say.)

I also tender you $217 35, being 6 months interest, at 7 per ct., due on the same contract Dec. 14th, 1864, and interest on said interest up to this date. I also tender you the 6 notes required by the same contract, all properly executed by said Kendall, and duly stamped, all dated June 14th, 1864, each for the sum of $1,000, and payable, respectively, to your order in 6, 12, 18, 24, 30, and 36 months from said date, with interest at the rate of seven per cent. per annum, payable annually. I also tender you, in payment of the first of said six notes, the sum of $1,035; and I demand an assignment of said patent right for said Cook county, which shall convey to said Kendall a good title thereto.

609 *Exhibit* 7.

To J. M. DAKE:

I hold in my hands a the contract between Orrin Kendall and John Pendleton, which is copied into the answer of said Kendall to the bill filed by you against him, and now pending in the Circuit Court of the United States for the northern district of Illinois: said contract is for the conveyance to said Kendall of the patent right which you claim in that suit.

As agent of said Kendall, I tender you $217 35, being 6 mos. int. on $6,000, int. due Dec. 14th, 1864, and int. on such int. up to date, at 7 per ct. per annum. Also six notes dated December 14, 1864, all made by said Kendall, and duly stamped each for the sum of $1,000, and payable, respectively, to your order in 6, 12, 18, 24, 30, and 36 months from that date, with interest at the rate of 7 per ct. per annum, payable annually. Also for the payment of the 6 mos. note and interest the sum of $1,035; and I demand an assignment of the said patent right for said Cook county, which shall convey to said Kendall a good title thereto.

Endorsed: Filed Oct. 3d, 1865. Wm. H. Bradley, cl'k.

610 4. *Depositions of William Clough, Findley Latta, and Jabez Reynolds, as follows, to wit:*

Depositions of sundry witnesses, taken by consent of parties, before me, M. H. Garry, a notary public of the State of Ohio, within and for the county of Hamilton, at the office of G. M. Lee, in the city of Cincinnati, county and State aforesaid, to be read in evidence on behalf of the defendant, in a certain suit in equity pending in the Circuit Court of the United States for the northern district of Illinois, wherein Joseph M. Dake is complainant, and Orrin Kendall is defendant.

Deposition of Wm. Clough.

William Clough, of lawful age, being produced, cautioned, and solemnly sworn, deposeth and saith in answer to interrogatories, as follows:

611 Ques. 1. By S. S. Fisher, defendant's counsel. State your age, residence, and occupation.

Ans. Age, forty-five; residence, Cincinnati, occupation, consulting engineer and patent solicitor.

Ques. 2. State, in general, your opportunities for acquaintance with the details and principles of machinery.

Ans. Am well acquainted with mechanical science practically and theoretically, having been for many years connected with mechanical and manufacturing pursuits, and for the last seven years have been solicitor of patents. I have been examined as an expert in many suits involving distinctions in mechanical contrivances.

(Defendant's counsel here offers in evidence a certified copy from the printed records belonging to the library of the United States Patent Office, of the specifications and drawing in the matter
612 of the English patent, granted to George Augustus Robinson, and Richard Eagan Lee, July 10, 1849, No. 12,703, said patent being for "certain improvements in the manufacture of bread and in the machinery or apparatus to be used therein; and also improvements in the regulation of ovens and furnaces, parts of which improvements are also applicable to other similar useful purposes.")

Also a certified copy from the printed records belonging to the library of the United States Patent Office of the English patent granted to John Danglish, October 1st, 1856, No. 2,293, for "an improved method of making bread."

(Complainant's counsel objects to the admission of these two papers because they are not in proper form or properly authenticated or certified, to make them evidence, and are incompetent as testimony.)

Ques. 3. Have you read, and do you understand, the letters patent granted to James Perry and Elisha Fitzgerald by the United
613 States for "an improvement in raising dough," dated March 9, 1858, upon which this suit is brought, and the inventions described and specified therein? State also if you have made a sim-

ilar examination of the English patents marked Exhibit "A" and Exhibit "B," and whether you understand the construction and operation of the mechanism described therein.

Ans. I have examined the three patents referred to in the question, and think I understand them.

Ques. 4. State to what extent, if any, you find the inventions described and specified in the patent to Perry & Fitzgerald, in the patent to Robinson & Lee, Exhibit "A," and give your reasons for any opinions you may express.

(Complainant's counsel object to the opinion, of the witness based upon the two English patents before objected to, because they are not properly proven.)

Ans. I find in the patent of Robinson & Lee the descrip-
614 tion of a bread-making process in which carbonated or aerated water is employed for making the dough as a substitute for yeast or leaven, and an apparatus described and shown for generating the gas for charging the water and mixing the aerated water with the flour. In this apparatus, although aerated water is used, no provision is made for working the dough under pressure and preventing the escape of a portion of the gas with which the water has been charged.

There is shown in this contrivance a kneading-mill, or drum, with horizontal arms; on the inner face also a revolving kneading shaft with similar arms, the motion of which shaft in the kneading drum serves to mix and combine the aerated water with the flour. I find also in this apparatus a device for permitting the escape of the kneaded dough, and a device for cutting off portoins of the dough, forming thereby loaves of a proper size for baking.

615 In the patent granted to Perry & Fitzgerald I find the nature and object of the invention to be "the preparing of paste or dough for baking, without the mixing therewith chemical agents," which term I understand to refer to yeast, leaven, and baking powders; and that the invention is stated to consist in mixing the dough in a "close vessel, under gaseous pressure, also in discharging the dough by pressure from the mixing vessel in quantities of the required size," to be taken directly from the discharge to the oven. In this patent I find a mixing drum, armed with blades projecting from its inner face, a central shaft with blades projecting therefrom, the rotation of which serves to mix and knead the charge of flour and water previously supplied to the kneading drum. I find in connection with this device, provision made for the reception of gas under high pressure, the drum being closed air-tight, and
616 in kneading provided to be made under gaseous pressure. I find a discharge-pipe through which the kneaded dough leaves the drum and "is there cut off in pieces of the required size to form the loaf." The mechanism for working the flour into dough, and the provision for permitting the discharge of the kneaded dough, is quite alike in the two patents. In the last, the principle of gaseous pressure is superadded in the process.

Ques. 5. State to what extent, if any, you find the inventions described and specified in the patent to Perry & Fitzgerald, in the English patent of John Danglish, Exhibit "B," and give your reasons for any opinions you may express.

Ans. I find in the Danglish patent the fact recited that "heretofore in the manufacture of bread the dough has sometimes been made by mixing flour in a closed vessel, with water charged with carbonic acid gas, and that the invention of said Danglish consists in
617 compressing the air in the vessel in which the flour is contained before admitting the water charged with gas, so as to prevent the escape of the gas before the process of mixing or kneading is completed." In the description of the apparatus, a spherical mixing or kneading vessel is shown, with a central shaft armed with blades, which shaft revolves in the mixing vessel, kneading the dough. Provision is also made for the reception of gas from an adjacent generator, also of water charged with gas, the vessel having been previously supplied with dry bread-stuff and charged with gas; the operation of kneading is now performed by the revolution of the centra shaft armed with blades; provision also being made for the revolution of the spherical kneading vessel in combination therewith.

In this patent I find the breadstuff kneaded under gaseous pressure, being charged with gas so as to secure the raising or leavening of the bread without the use of chemical agents, as provided in
618 Perry & Fitzgerald's patent. The specific difference between the two processes consisting only in the use of aerated water in combination with gaseous pressure in Danglish's patent, while in Perry & Fitzgerald's the water, without being previously aerated, is introduced into the kneading drum.

That is in one of the processes which they describe as their invention. In another process, however, described by them as being one mode of employing their inventian, they say: "It will be obvious that the water previously charged with carbonic acid gas may be introduced instead 'of the water and gas separately.'"

In the Danglish patent provision is made for the removal of the dough from the kneading case, by gaseous pressure. The mode employed for discharging being identical with that provided for in the patent of Perry & Fitzgerald, and constituting one element of their invention.

Ques. 6. What will you say, then, as to the substantial
619 identity or difference between the apparatus and mode of raising dough described and specified in the Perry & Fitzgerald, and Danglish patents?

Ans. So far as inventive matter is specified and claimed in the Perry & Fitzgerald patent, I think it is fully anticipated in the patent of Danglish, so far as I can at present see. There are many things contained in each patent not found in the other. I refer only to that which I understand to be invention in the Perry & Fitzgerald patent.

Complainant's counsel not waving the exceptions heretofore taken to Exhibits "A" and "B" produced by defendant's counsel, and to the testimony of the witness thereon, proceeds to cross-examine.

Cross-examined by J. M. Lee, complainant's counsel:

620 Ques. Does the patent of Perry & Fitzgerald provide a mode of excluding atmospheric air from the kneading vessel?

Ans. It does.

Ques. Does the patent of Robinson & Lee, called Exhibit "A," provide any mode for excluding atmospheric air from the kneading vessel?

Ans. None apparent.

Ques. Is the kneading vessel of Robinson & Lea air-tight?

Ans. Not apparently.

Ques. What forces a discharge of the kneaded dough from the Robinson & Lea kneading vessel?

Ans. It is discharged by its own gravity.

Ques. What forces the discharge of the kneaded dough from the Perry & Fitzgerald kneading vessel?

Ans. Gravity, and superincumbent gaseous pressure.

621 Ques. Are there any means provided in the Danglish patent, Exhibit "B" for exhausting or excluding the atmosperic air from the Danglish kneading vessel?

Ans. There are means provided for excluding the atmospheric air; facilities also exist for displacing it by gas, if necessary, although this, I believe, is not specified as necessary.

Ques. Describe what means are given in the Danglish patent whereby the air originally in the kneading vessel, when the kneading begins, is exhausted or driven out from the kneading vessel, and state whether this Danglish patent contemplates exhausting the kneading vessel, during the kneading process, of its atmospheric air?

Ans. The exhausting of the air of the kneading vessel during the kneading operation is not contemplated in the Danglish patent.

Ques. Does the Danglish patent contemplate that the kneading vessel shall be devoid of atmospheric air during the process of kneading?

Ans. It does not necessarily.

622 Ques. What causes the discharge of the dough, when kneaded, from the Danglish kneading vessel?

Ans. Gravity, and superincumbent gaseous pressure.

Ques. What are the ingredients constituting this gaseous pressure which forces out the kneaded dough in Danglish patent?

Ans. Mainly carbonic acid gas. The atmospheric air originally contained in the kneading vessel would still remain there, compressed by the pressure of carbonic acid gas, and exerting its expansive force in connection with the former, in causing the discharge. I would say in addition, the tendency of the gas to be absorbed by the water to the exclusion of atmospheric air, would leave most of the air in the open part of the vessel, above the kneaded dough.

Re-examined by S. S. Fisher:

623 Ques. Please look at the second modification in Danglish's patent, illustrated by figures 5 and 6, and state whether or not you find in the description of that apparatus, provision for pumping carbonic acid gas into the mixer or kneading drum, before the intro-

duction of aerated water, until the pressure of gas in the drum becomes equal to the pressure in the condenser, where it is generated?

Ans. I find in a portion of the specification referred to in the question a practical direction, requiring the mixing vessel to be charged with gas, by a pump, until the pressure in the kneading vessel is equal to the pressure in the vessel containing aerated water, which is to be supplied to the kneading vessel, so that the gas, with which the aerated water is charged, may not be set free when introduced into the kneading vessel.

WM. CLOUGH.

624 Also, at the same time and place, Finley Latta being produced, cautioned, and solemnly sworn, deposeth and saith, in answer to interrogatories, as follows:

Deposition of F. Latta.

Finley Latta, being produced, cautioned, and solemnely sworn, deposeth and saith, in answer to interrogatories, as follows:

By S. S. Fisher, counsel for defendant:

Ques. 1. State your age, also residence and occupation during the years 1863 and 1864.

Ans. Age, 48; Cincinnati; engineer.

Ques. 2. What connection, if any, had you with the manufacture of aerated bread?

Ans. I was superintendent of the manufacture of aerated bread, at that time, in Cincinnati.

Ques. 3. State how far you are familiar with the construction and operation of the apparatus for mixing dough under gaseous pressure patented by Perry & Fitzgerald.

Ans. I was superintendent in putting the apparatus up for the company, and in the operation of it, from May, 1864 until January, 1865.

625 Ques. 4. State if you have examined the American patent to Perry & Fitzgerald, for improvement in raising dough, dated March 9, 1858, and the English patent Exhibit "A" to Robinson & Lea, dated July 10, 1849, No. 12,703; and the English patent to John Danglish, Exhibit "B," dated October 1, 1856, No. 2,298, and if you understand the principle and mode of operation described, illustrated, and specified in each of said letters patent.

Ans. I think I do understand the principle and mode of operation of said improvements described in said letters patent.

Ques. 5. Please to compare the apparatus for raising dough described and specified in the Perry & Fitzgerald patent, 1st, with that described and illustrated in the patent of Robinson and Lea, and afterward with that described in the patent to John Danglish, and state how far in your opinion the the process of raising dough is substantially the same in these three patents.

626 (The complainants counsel object to this question, and the answer that may follow because the papers shown to the wit-

ness and referred to as the English patents of Robinson & Lea, and Danglish, are not properly proven or authenticated to make them evidence, being only certified copies from the Patent Office of what purports to be a printed copy of these English patents.)

Ans. The process of mixing dough in the Robinson patent appears to be done in an open vessel; the aerated water is let into the flour, while the mixing process is going on. Should think in practice would not answer the purpose very well. The process of kneading is similar to both of the others (Danglich's and Perry, and Fitzgerald's.) The process of Danglish's patent is a spherical kneader horizontal

627 shaft with arms extending outwards from the shaft swung upon a trunnion, while the arms rotate in one direction, the kneader in the opposite, the gas entering through the trunnion; the water, for the purpose of mixing the dough, is placed in a separate vessel with water gauge attached, to determine the amount of water to be used in the mixture. This vessel is closed, calculated to stand a pressure sufficient to force the gas and water into the kneader. The process of working is to place a sufficient amount of flour in the kneader, and close the kneader up air-right; then a pressure is applied to the outer vessel containing the necessary quantity of water to mix the amount of flour in the kneader, according to the directions of the patent. There is a pressure of air or gas forced into the kneader before the communication between the outer vessel and the kneader is opened. When the communication is opened, the outer vessel having the most pressure, forces the water into the

628 kneader; then, the kneading is commenced. After it is kneaded a sufficient time, the kneader is stopped, the opening turned downward, the cap which closes it can be slid back and forward by a screw, the dough being forced out by the pressure. Both the Danglish, and Perry and Fitzgerald, are raised under pressure. The Danglish plan appears to have a pump attached for the purpose of pumping gas, air or water. The Perry & Fitzgerald does not describe any such arrangement.

Ques. State whether or not, from your comparison of the Danglish and Fitzgerald patents, you would consider the processes substantially the same.

Ans. The results produced would be the same. Both of them in practice vary the operation somewhat. Danglish's in practice does not rotate the kneader; Perry and Fitzgerald's uses the pump for getting the pressure up to the desired amount.

Ques. State whether in the use of the apparatus for mixing

629 dough under pressure, the Aerated Bread Company over which you were superintendent, it was your practice to exhaust the air from the kneader, after introducing the flour, and before letting in the gas; and how far, in your opinion, such exhaustion is material in the process of raising dough in a close vessel under gaseous pressure.

(Complainant's counsel objects to the first clause of this question as irrelevent.)

Ans. It was not our practice generally, although we fitted up the

pipes necessary to exhaust the air from the kneader. It depends altogether how you discharge the kneader of the gas after drawing the dough.

The carbonic acid gas being heavier than air, will not come out of the kneader unless it is exhausted by the pumps or forced out with steam or air Consequently, if left alone, the gas still remains in the kneader until you are ready to close the kneader up for another mixture. If you exhaust the gas by the pump, it creates a
630 vacuum in the kneader which will be filled with air immediately upon opening the cap of the kneader; then it is necessary to exhaust that air that rushes into the kneader; before filling the kneader with gas, it depends altogether how you operate the process. I don't think we ever exhausted the air from the kneader more than 6 or 7 time during the time the bakery was in operation, because we could not discover any effects it had upon the bread, and only a waste of time.

Cross-examined by G. M. Lee, esq., counsel for complainants:

Ques. When did you begin to superintend the Cincinnati bakery where the aerated bread mentioned was made?

Ans. In the spring of 1864.

Ques. Had you done anything at baking before that?

Ans. No, sir.

631 Ques. Had you been an engineer all your life before then?

Ans. Pretty much all my life.

Ques. How long did you superintend this bakery?

Ans. From March, 1864, till January, 1865?

Ques. Who owned and carried on the establishment?

Ans. It was owned by a company composed of A. B. Latta, (now dead,) myself, Nelson Gates, William Overend, T. W. MacCarthy, and O. H. Geoffrey, and David Linton.

Ques. When did this company begin and close the baking business?

Ans. Begun about 16 May, 1864, closed about 14 January, 1865.

Ques. Were either one of the members of this company practical bakers when they begun?

Ans. No, sir.

Ques. Please give me an estimate of the extent of their manufacture; that is, how much was baked per day; or how much in all?

632 Ans. I suppose it would average about 10 barrels per day during the time they were in operation.

Ques. What was the general quality of the bread?

Ans. The bread was very good after some time. We did not make it very good till towards last of August or first of September.

Ques. At what stage of the kneading did you introduce the gas into the kneader? and into what part of the kneading vessel?

Ans. We usually introduced the gas before we commenced the kneading, in order to charge the water with the gas before the kneading commenced. We put the water in first, then bolted the flour into the kneader, then closed the kneader, turned the gas on until it showed a pressure of 40 or 50 lbs. Then we started the kneader, and kneaded 15 or 20 minutes; were compelled to operate

in this manner because the arms in the kneader had not surface enough to mix the gas with the dough. But we had an arrangement whereby we let the gas in the top of the kneader, after the
633 dough had been mixed, but found we could not get a sufficient quantity of gas in the dough.

Ques. State whether, after the gas was introduced into the kneader, you had, or permitted any opening whereby the air in the kneader could be driven out or escape.

Ans. We had a cock on the top of the kneader, which we turned if we wished to let the air out.

Ques. Please state whether the company that you superintended purchased a right, under the Perry Fitzgerald patent, for Cincinnati, and what was the contract price? State also, if you, as the administrator of A. B. Latta, deceased, or as agent for the company, have since sold this right? and if so, to whom and for what price?

Ans. I think the price we agreed to pay for the patent was $4,000; we have not sold it. Mr. Pendleton relieved us of it, and then sold it himself to the present company.

634 Ques. State whether some persons are still making the aerated bread at the old stand in Cincinnati, and who?

Ans. A firm called G. K. Withington & Co., are still manufacturing aerated bread at the old stand.

Question. Please state whether your bread made was at times streaked in appearance, and offensive in smell? If so, how often? What do you suppose the cause to be?

Ans. It was for some length of time, during the hot weather, occasioned by the impurity of the gas; when we purified the gas thoroughly, then we could make good bread.

Ques. Do you suppose that air, permitted to remain in the kneading vessel, will injure the quality of the bread; and that its quality will be affected by atmospheric changes, if much air remains in the kneader.

Ans. It may remain there as long as it likes, so that is not forced into the dough; but if thoroughly mixed with the dough, would have a bad effect on the bread, but if the dough was highly charged
635 with gas, would be very nearly forced out of the dough after being drawn into the pans; the air being the lightest, would escape first, and if the air was pure, it would not hurt it at all; only the impurities of the gas or the air injures the bread.

Ques. Are you still in the bread business?

Ans. No, sir.

FINLEY LATTA.

THE STATE OF OHIO, *Hamilton County, ss:*

I, M. H. Garry, a notary public, within and for the county of Hamilton, State of Ohio, do hereby certify that the above depositions of William Clough, and Finley Latta, were taken before me, at the office of George M. Lee, in the city of Cincinnati, county and State aforesaid, on the 24th day of January, A. D. 1866, by and for the defendant in the cause mentioned in the caption of these depositions.

George M. Lee appearing for the complainant, and S. S. Fisher appearing for the defendant; that the said William Clough, and
636 Finley Latta, were first duly sworn by me, to testify the truth, the whole truth, and nothing but the truth, in said cause; that their testimony was reduced to writing, by me, in their presence, and was signed by them in my presence, and that I am not of counsel for either party, or otherwise interested in the event of this suit.

In testimony whereof, I have hereunto set my hand and official seal, this 24th day of January, A. D. 1865.

[SEAL.] M. H. GARRY,
Notary Public, Hamilton County, Ohio.

Notary's fee, $12 00

[5-ct. revenue stamp cancelled.]

637 *Deposition of Jabez Reynolds.*

Deposition of a witness, taken by consent of parties, by one Harvey E. Randell, a notary public, within and for Hamilton county, Ohio, by consent of parties, at my office, in Cincinnatti, on Saturday, the twenty-seventh day of January, A. D. 1866, to be read in evidence on behalf of the defendant, in a certain suit in equity, now pending in the Circuit Court of the United States, for the Northern District of Illinois, wherein Joseph M. Dake is complainant, and Orrin Kendall is defendant.

Jabez Reynolds, of lawful age, being cautioned and affirmed on behalf of defendant, deposeth, and saith as follows:

638 Question 1st., by S. S. Fisher, for defendant. State your age, residence, and occupation.

Ans. Age, 63; reside in Cincinnatti, Ohio; occupation, machinist.

Question 2d. State what acquaintance you have had with the manufacture of aerated bread?

Ans. Some years since I repaired several irons and machine in the hands of Samuel Clover, under the direction of Mr. Jno. Pendleton, of New York, which was used for combining flour, water, and gas, in the making of aerated bread, in the operation of which a force pump was used to force gas into the mass contained in an air-tight vessel, under a pressure, by which the materials were combined by a mechanical motion or action within the vessel. The materials contained in the vessel were flour, water, perhaps with a little salt, carbonic acid gas, or some other gas, which would in itself have a small proportion of atmospheric air, or in other positions carbonic acid gas might be left out and atmospheric air substituted under the
639 same pressure. I put the machine up and applied the power to it; and whenever it wanted repairing, I repaired it, under the direction of Mr. John Pendleton, and frequently saw it in operation.

Question 3. State if you have examined the patent granted to Perry & Fitzgerald, March 9th, 1858, for an improvement in raising dough, and if yea, state how far the aparatus, referred to by you in

your last answer, corresponded to that described in the specifications of said patent.

Ans. Well, the apparatus I speak of is similar to this patent.

Question 4. State if in the practical operation of that machine it was the practice to exhaust the atmospheric air before introducing carbonic acid gas?

Ans. I think in that machine there was no provision by which the atmospheric air could be exhausted. When it was charged there was very small space left for atmospheric air.

Question. State if you ever experimented with that appara-
640 tus, using atmospheric air alone in raising dough; and if yea, with what result?

Ans. Several times that vessel was filled with atmospheric air instead of gas, and under the same pressure, and produced bread of the same character and appearance, and taste, &c.

Question. State if you have examined the English patent, granted to John Danglish, Oct. 1st, 1856, No. 2,293, and if yea, how far, in your opinion, the process of raising dough therein described agrees or disagrees in principle with that set forth in the Perry & Fitzgerald patent, and specified in the two claims thereof.

(Complainant's counsel objects to the question, because the paper in question has not been sufficiently authenticated or proven to make it evidence.)

Answer. I have examined the patent of John Danglish. Danglish describes placing flour within a vessel, adding to it water, aerated or not; also describes pumping in carbonic acid gas, by the means of which he produces the pressure; in the Perry & Fitzgerald patent they put in the flour and the water, and the carbonic acid gas,
641 by which means they produce the pressure; and they propose by their pressure, to put their dough into the shape of a loaf, while Danglish only proposes to discharge the dough out of the vessel by the pressure, without regard to the form. In the combination of materials they are similar.

Cross-examination.

Question. Has the Perry & Fitzgerald patent provided a mode for exhausting the air from the kneader?

Ans. The Perry & Fitzgerald speaks of exhausting from their vessel when charged, the atmospheric air, and the inference would be by same pump they charge with.

Question. Does the Danglish patent contemplate exhausting the atmospheric air from the kneader?

Ans. It does not, in my opinion.

Question. Does the Danglish patent provide any mode of
642 forming the kneaded dough into loaves at the time of discharge?

Ans. I think not.

Re-examination.

Question. Does the exhaustion or non-exhaustion of atmospheric air constitute, in your opinion, a material difference between the two processes?

(Complainant's counsel objects, because the witness is not shown to have sufficient knowledge of the effect of the absence or presence of atmospheric air in this mixture.)

Ans. So far as I have had observation in the matter there is no apparent difference in the bread produced.

JABEZ REYNOLDS.

THE STATE OF OHIO, *Hamilton County, ss*:

I, Harvey E. Randell, a notary public, within and for the county of Hamilton, State of Ohio, do hereby certify that the above
643 deposition of Jabez Reynolds was taken at the office of George M. Lee, in the city of Cincinnatti, on January 27th, A. D. 1866, by and for the defendant in the cause mentioned in the caption of this deposition; George M. Lee appearing for the complainant, and S. S. Fisher appearing for the defendant; that the said Jabez Reynolds was first duly sworn by me, to testify the truth, the whole truth, and nothing but the truth, in said cause; that his testimony was reduced to writing, by me, in his presence, and was signed by him in my presence, and that I am not of counsel for either party, or otherwise interested in the event of this suit.

[SEAL.] HARVEY E. RANDELL
Notary Public.

[3-ct. U. S. rev. stamp.]

Endorsed: Opened Jan'y 31, 1866, for Mr. Chandler. Wm. H. Bradley, cl'k.

644 In the Circuit Court of the U. S. for the Nor. Dist. of Illinois.

5. 2nd deposition of Findley Latta before H. F. Mather, as follows, to wit:

Deposition of Finley Latta.

JOSEPH M. DAKE
vs.
ORRIN KENDALL.

Deposition of Finley Latta, a witness introduced on the part of the defendant by stipulation or mutual agreement of counsel for the respective parties, July 3rd, 1865, before Hiram F. Mather, a master in chancery of the Superior Court of Chicago.

Present: Messrs. Nichols and Mr. Goudy, for complainant; Mess. Woodbridge and Grant, for deft.

Finley Latta, a witness for the defendant, was introduced before

me, said Mather, and, being first duly sworn, was examined and cross-examined, and deposed thereupon as follows:

645 My age is 47 years; I reside in Cincinnatti, Ohio; I am an engine-builder; I know the parties to this suit.

The counsel then proceeded by questions and answers, as follows:

Q. 1. Were you a member of the firm of A. B. Latta & Co., of Cincinnatti? If yea, who were also members of the firm?

Ans. The firm was "Aerated Bread Company," a joint stock company under the laws of Ohio. The partners, or joint stockholders, were A. B. Latta, David Linton, O. H. Jeffroy, Nelson Gates, Wm. Overein, D. W. McCarthy, Finley Latta.

Q. 2. When was said company formed, and for what purpose?

Ans. Formed about the middle of September, 1863, for the purpose of making aerated bread under the patent which is in controversy in this suit. We were formed for that purpose and incidentally attended to some other branches of the baking business.

Q. 3. Did said company put said patent into practical ope-
646 ration? and if yea, who had the management of the bread-making?

Ans. They did put it into operation. I superintended the bread-making myself. Mr. A. B. Latta also assisted me some, and also Wm. Overein.

Q. 4. State the amount of mechanical knowledge which you and your two assistants had at the time of making said bread.

Ans. We had spent our whole lives, as business men, in the business as mechanics, and were familiar with machinery.

Q. 5. Where did you obtain the machinery which you used in that business? Describe its quality, value, and adaptation to that business.

Ans. We obtained the machinery at the Holley Manufacturing Company, of Lockport, New York. Its quality—we had to make considerable alterations in it before it answered the ends intended. It was recommended to us by John Pendleton to purchase the machinery in question. I think the machinery we bought at Lockport of Holley came to about seven hundred and thirty dollars. The
647 generator we bought in Philadelphia; *i. e.*, the generator, and the balance we had made in Cincinnatti. The whole outfit, including what we paid for the patent and putting up, amounted to about twenty-seven thousand dollars, ($4,000 for the patent.)

Q. 6. Under whose direction did you fit up your establishment originally.

Ans. A. B. Latta superintended the construction of the establishment. Mr. A. B. Latta visited Buffalo, N. Y., Philadelphia, Pa., Washington, D. C., New York, N. Y., Boston, Mass., in order to get all the improvements there were in the business. Mr. Pendleton accompanied him from New York to Boston. There is nothing put up in our establishment contrary to Mr. Pendleton's opinion. We

went by his directions, and put up nothing but by his directions, in order to make a successful business.

Q. 7. Did you receive from John Pendleton any directions as to the working of the machinery in making the bread?

Ans. Yes; we got all the directions from him.

648 Q. 8. Examine the directions in the answer of Orrin Kendall in this case, which are therein alleged to have been given to said Kendall by said Pendleton, and then state how those directions compared with the directions given to you by said Pendleton, or how they compared.

(Objec'd to.)

Ans. They are about the same. I see no difference. I have examined the directions in the answer. The directions to me were verbal.

9. Please state what directions were given to you by said Pendleton.

Ans. To place the amount of water in the kneader first, that was necessary to mix the flour; then bolt the flour into it, three pounds of salt being first put into the water and dissolved for each barrel of flour; then to close the kneader up, let on the gas, and commence kneading. Knead about twenty minutes. The pressure of gas was directed to be not less than one hundred pounds to a square inch. Then draw off the dough. There were to be forty revolutions of the kneader per minute. Then to place the dough in the oven as

649 soon as possible. This completes the directions he gave us.

Q. 10. How did your establishment, when completed under Mr. Pendleton's advice, as you stated, compare with other establishments of the kind in the country?

Ans. We thought we had the best in the country.

Q. 11. When you commenced manufacturing bread, by what directions, if any, were you guided?

Ans. Solely by Mr. Pendleton's.

Q. 12. What use, if any, did you make of the specifications attached to the patent?

Ans. We used all the specfications claimed under the patent sold us by John Pendleton.

Q. 13. What kind of flour did you use in said manufacture?

Ans. We used the best flour we could get.

Q. 14. What kind of bread did you make?

650 Ans. The bread made was very inferior; it was very flat. It did not rise up. It was heavy. It cracked very much. The grain was very short.

Q. 15. From what causes, if any, did the failure arise?

Ans. It arose from the imperfection of the kneader. There was not sufficient number of arms to knead the dough properly. The dough came up, or out, very lumpy, filled with lumps of dry flour. The construction of the kneader, when we got it, could not, at eighty revolutions per minute, mix the dough properly, nor charge the dough with a sufficient quantity of gas to raise the dough properly. We had to introduce two-thirds more of arms in the kneader before we

succeeded in making bread that we could sell. I do not mean two-thirds more in number of arms, but two-thirds more of kneading surfaces. There were at first six knives in the kneader, which cut the dough. We introduced three more that were flat and lifted up the dough. The arms might be so placed that a smaller number of revolutions would be sufficient to accomplish the same object.

651 The number of revolutions required depends upon the position of the arms, and also their number, and the position at which they are placed so as to strike the dough. The arms might be so placed that five or ten revolutions would knead the dough so as to charge it with gas, but it would take more revolutions to properly knead the dough before introducing the gas. If you should determine the number and position of the arms and the number of revolutions which would be required in a kneader of a given capacity and form, it would not determine the same as adequate for a kneader of a different capacity.

Q. 16. Is there anything in the specifications attached to the patent, or in the said directions given you by John Pendleton, from which you could determine as to the number and position of the arms required in the kneader, or as to the number of revolutions required in any case? If yea, state the same.

Ans. No; there is nothing contained in the specifications or directions to direct. If your kneader happens to be construc ed

652 right, with a suitable number of arms to a given number of revolutions, then all would go well; otherwise it would be of no use. It is a matter of common sense and capacity of adaptation.

Q. 17. Supposing the kneader to be properly constructed, is there anything in the specifications attached to the patent to determine the number and rapidity of the revolutions required?

Ans. No.

Q. 18. What would be the effect on the bread if the dough is retained in the kneader longer than required, or if the revolutions were more rapid than necessary?

Ans. The bread would be flat, would not rise up properly. The grain of the bread would be very short.

19. How long did it take you to ascertain the number and position of the arms necessary in the kneader, and also the number and rapidity of revolutions?

Ans. It took between three and four months before we made good bread.

653 Q. 20. What assistance did you derive in that matter from the directions of said Pendleton?

Ans. None whatever. He misled us. If the kneader had been constructed right in proportion to his directions, then it would have operated well. But it was constructed for us according to his directions, as to the place and persons to purchase from, and it proved, as above stated, to have no adequate adaptation of arms or revolutions.

21. Supposing the machinery to be in all respects properly constructed, how would a skillful mechanic ascertain, with the patent and specifications before him, the number of revolutions required?

Ans. He could not ascertain at all except by experience. It is a matter of judgment and skill; some men might occupy two weeks, while others would not get it right in ten years.

Q. 22. State what you know, if anything, of the experience of the establishments in making this bread.

Ans. I only know by what they say—only report.

654 Q. 23. Have you put up any machinery, and if any, what, for the complainant in this case?

Ans. We put up the machinery we used in Cincinnatti for the complainant in this cause. He bought it of me, and employed me to put it up.

Q. 24. Have you seen aerated bread made at different establishments?

Ans. I have seen that manufactured at seven different establishments.

Q. 25. How did they compare in taste, quality, and smell?

Ans. They were all different from each other.

Q. 26. When did you last see John Pendleton at Cincinnatti?

Ans. About 5 week ago, and also before then, about 21st of April last. It might not have been on that day, but a day or two before that.

Q. 27. What did he say in April about the aerated bread

655 made by Mr. Kendall in Chicago?

(Objected to.)

Ans. He said it was about the best that was made in the country.

Q. 28. When did you first see C. & L. Woodman, and where?

Ans. In April sometime—can't give the day—at my bakery of the Aerated Bread Company in Cincinnatti.

Q. 29. What inquiry, if any, did he make of you at the time?

(Objected to.)

Ans. He inquired the price of the kneader, pumps, and other machinery for bread making; wanted to know where the patentee could be found; asked who he was. I told him Pendleton, and he asked if he was then in town. Gave him also Pendleton's lawyer's name.

Q. 30. Is your company at this time manufacturing aereated bread? If not, why?

656 Ans. No; we are not. We have abandoned it because it did not pay.

Cross examination by Mr. Goudy:

X 1. What are the two things which you understand to be covered by the patent?

Ans. Kneading the dough under pressure. 2. Discharging it by means of a cock.

X 2. Is not the use of gas also secured by the patent?

Ans. I think it is not. I think the patent disclaims that.

X 3. Is the introduction of gas in a tight vessel secured by the patent?

Ans. The introduction of gas, or some other substance, (as air,) is secured by the patent.

X 4. Can good aerated bread be made without the use of those things thus covered by the patent?

Ans. Good aerated bread could be made two years before
657 this patent issued by the patent taken out by Mr. Dangleish, of England. They could not, however, be made without the things covered by the patent as above specified.

X 5. Can good bread be made by following the specifications attached to the patent, provided the machinery is properly constructed for the use of the principle described in said patent?

Ans. Yes, it can.

X 6. Did your company in Cincinnati succeed in making good bread?

Ans. Yes, we did.

X 7. Were you not making money at the time you stopped the business?

Ans. No, we were not.

X 8. Has good bread been made to-day at the establishment of Woodman & Dake, using the same machinery which you had at Cincinnatti?

658 Ans. Yes, it has been.

X 9. Were the same arms used in the kneader to-day, which you had put in at Cincinnatti?

Ans. No, not the same.

X 10. State the difference or change?

Ans. We took out three arms and increased the width of six when it was set up here in Chicago, doubling the capacity of the former width. Increased the speed of the kneader from 40 revolutions to 60.

X 11. Have you a controversy with Mr. Pendleton now pending in regard to the novelty of the improvement claimed by the patent?

Ans. Yes, I have.

Re-examined by Mr. Woodbridge:

Q. 31. How much did it cost you before you succeeded, so as to make good bread?

659 Ans. Between five and six thousand dollars. There is nothing in the patent to show how the machinery should be constructed. It is to be gained by dear experience. I do not mean by my reply to the 5th cross-interrogotary, that I could make good bread by any machinery until the rapidity of revolutions had been ascertained by experience.

FINLEY LATTA.

Subscribed and sworn to July 3d, 1865, before me.

HIRAM F. MATHER,
Master in Chancery of the Superior Court of Chicago.

Circuit Court of the United States nor. dist. of Illinois.

JOSEPH M. DAKE
vs.
ORRIN KENDALL.

I, Hiram F. Mather, a master in chancery of the Superior Court of Chicago, do hereby certify that before the commencement of the examination of the witness whose name is subscribed to the foregoing deposition, he was by me duly sworn according to law, and that the questions and answers were read over to the witness as they
660 were respectively taken down by me, and that the same was subscribed to by said witness before me, on his said oath, July 3d, 1865.

Dated July 3d, 1865.

HIRAM F. MATHER,
Master in Chancery of the Superior Court of Chicago.

[5 ct. U. S. rev. stamp.]

Endorsed: "Filed Oct. 3d, 1865. Wm. H. Bradley, cl'k."

661 6. *Deposition of S. T. Bacon, as follows, to wit:*

Depositions of witnesses taken in a cause pending in the Circuit Court of the United States for the northern district of Illinois, wherein Joseph M. Dake is complainant, and Orrin Kendall is defendant, being a cause in chancery taken by and for said defendant, to be read on the hearing of said cause. Lemuel S. Fisher appearing for the defendant, and George M. Lee for the complainant, before me, Charles F. Walcott, appointed by said court on examination in said case, taken at my office in the City of Boston, and Commonwealth of Massachusetts, on the second day of March, A. D. 1866, by consent of parties.

Steuben T. Bacon, of lawful age, having been first duly examined, cautioned, and sworn by me as hereinafter certified, deposeth and saith as follows:

Interrogatories by Lemuel S. Fisher, esq., of counsel for the defendant.

662 Int. 1. State your name, age, residence, and occupation?

Ans. Steuben T. Bacon: forty-five years: Boston, Mass. I am one of the manufacturers of the improved aerated bread.

Int. 2. How long have you been engaged in the manufacture of aerated bread? State also your opportunities for information respecting the manufacture of such bread, both in this country and in Europe?

Ans. I have been so engaged nearly three years, commencing with December, 1861. I have given nearly my whole time and attention to this subject. I have had the assistance nearly all this time, also, of Mr. James Perry, one of the patentees of the Perry & Fitzgerald patent for making aerated bread. I have consulted personally with at least

twelve or fifteen owners and manufacturers under this patent; with several of them many times. I have also passed about three months in England and France, investigating into the manufacture of aerated bread, and have there conferred with several manufacturers and patentees relating thereto.

Int. 3. State if you have examined the following patents, to wit: the patent of the United States to Perry & Fitzgerald, dated March 9th, 1858, for an improvement in raising dough; an English
663 patent to Luke Hebert, granted in 1833; an English patent granted to G. A. Robinson and R. E. Lee, July 16th, 1849, No. 12,703, and marked Exhibit A, and an English patent to John Danglish, granted October 1st, 1856, No. 2,293, and marked Exhibit B. If yea, state whether you understand the inventions described and specified in these several letters patent?

Ans. I have so examined these patents and understand them.

Int. 4. Please to state how far, in your opinion, if at all, the invention described and specified in the letters patent to Perry & Fitzgerald above-named, is found in the description and specifications of each of the above-named English patents?

(Objected to by complainant's counsel, so far as it requests the witness to state an opinion upon patents not made exhibits in the cause, and not presented to the witness.)

Ans. As I worked the Perry & Fitzgerald patent up to my departure for England, and as I understand the Hebert patent, I regard the two inventions almost identical; but with my understanding of the American patent itself, it contemplates drawing the dough in any desired quantity, whereas with Hebert's patent it contem-
664 plates drawing the dough continuously until the batch was exhausted. The Hebert patent does not, I believe, state the amount of pressure, on the square inch, under which it was worked by pressure. I mean the pressure of carbonic acid gas; whereas the Perry & Fitzgerald patent contemplates regulating the pressure as desired. I understand the Robinson & Lee patent to be similar to the Hebert patent, excepting that the former is continuous in its supply and discharge of material, differing also in the mechanism by which the operations of kneading and drawing off the dough are performed. I regard the Robinson & Lee patent as anticipating the Perry & Fitzgerald patent in its use of gas, or aerated water under pressure, and discharging the dough, or aiding its discharge, by the gaseous pressure. I understand the Danglish patent to disclaim the discoverer of the use of carbonic acid gas under pressure, in the manufacture of aerated bread, or of discharging the dough by such pressure, as being not new. The chief feature of the Danglish patent is that of preventing the escape of the gas from the aerated water upon it introducing into the mixer; this is accomplished in the Danglish patent in the same way, as in the Perry & Fitzgerald patent. I regard the Danglish patent as anticipating the Perry & Fitzger-
665 ald patent in all respects, except the allusion in the Perry & Fitzgerald patent to the exhaustion of the atmospheric air, under the conditions stated in their patent, wherein they seek to

provide for the use of aerated water; also the Perry & Fitzgerald patent contemplates cutting the dough off in pieces of the required size to form the loaves, while it is being discharged from the mixer, whereas the Danglish patent does not speak of cutting off the dough, but that the dough is forced into a proper vessel to receive it.

Int. 5. Are you a licensee or assignee under the Perry & Fitzgerald patent?

Ans. Until May last I was lincensee under the Perry & Fitzgerald patent. I then sold and transferred my license to the Boston Wheat and Bread Company.

Int. 6. What had the patentees, or either of them, to do in the way of advice or supervision with the original construction of your work?

(Complainant objects to the question as irrellevant.)

Ans. James Perry, one of the patentees, of whom I obtained my license, designed and supervised the construction of nearly everything relating to my manufacture of aerated bread under this
666 patent. I employed him thus, because he stated to me that machinery previously constructed was defective in construction, and contrary to the principles of the invention laid down in the patent, and he refused to license any one, unless the defects then existing in the manufacture were remedied, stating that it could all be easily done.

Int. 7. State what apparatus he devised or constructed for the exhaustion of atmospheric air; or what directions he gave upon that subject; or what apparatus, if any, you employed for that purpose.

(Same objection as to 6th int.)

Ans. He made no provision whatever for exhausting the atmospheric air during the summer of 1864. I instituted many experiments, with a view to perfecting the bread, that it might be acceptable and saleable. One of them contemplated the exhaustion of the air, but he dissuaded me from carrying it into effect, saying it was useless, and that the mode then in use of removing the air was ample for the purpose.

Int. 8. What was the mode then in use?

Ans. By opening a valve at the top of the mixer. We fre-
667 quently, however, made the bread without removing the air, which has been, apparently, of as good quality as that produced when we did exclude the air.

Int. 9. State if you have ever examined the mixer, when it has been standing for some time after the kneading and discharge of dough, with a view of ascertaining the quantity of atmospheric air remaining. State what examination you made, and the result of it.

Ans. I have frequently made such examinations, and have failed to find any considerable atmospheric air in the mixer, even when it has been standing open at the top for several hours. I have introduced a light into the mixer, and it would instantly be extin-

guished upon going below the top inside. This is the case excepting after the kneader has been washed out. This must be the case, from the fact that carbonic acid gas, being heavier than atmospheric air, remains in the mixer to the exclusion of the air. Whenever I have desired to exclude the atmospheric air from the dough, in working the process, it has been to exclude such air as passed into the mixer with the flour and water, regarding, as I always had, the odor of the flour used to be in a measure offensive. But I have made
668 most excellent bread by the introduction, by means of the pump, of purified atmospheric air into the mixer.

Int. 10. State whether you ever had any conversation with Mr. Fitzgerald, one of the patentees, in relation to the suggestion in the Perry & Fitzgerald patent about exhausting the air; and if yea, what he said about it?

(Same objection as to 6th int.)

Ans. I had such conversation with Mr. Fitzgerald in the winter of 1864 and 1865. I asked him if, by the use of an air-pump applied to the mixer, while making dough therein, a perfect vacuum could be obtained, if he did not think the quality of the bread might be improved thereby. He replied that he thought not. I asked him under what circumstances the producing of a vacuum on the mixer, he had ever practiced or contemplated in the preparation of his patent papers and model. He replied that no such idea was thought of or considered by him at the time. I then asked him if he understood the patent in this respect. He replied that the patent contained no allusion to the subject.

Int. 11. At the top of page six of the certified copy of the
669 Perry & Fitzgerald patent, now shown you, there is a disclaimer of the special apparatus for mixing described; will you please point out what provision is made in the alternate form then spoken of for any exhaustion of the air?

Ans. There is none.

Int. 12. What direction does the Perry & Fitzgerald patent give as to the speed at which the kneading arms are to be driven, and the size of the discharge aperture?

Ans. None.

Int. 13. What do you say as to the importance of these two points?

Ans. They are very important, if good bread is desired.

Int. 14. What would be the effect of using too small a discharge aperture?

Ans. It would impair the vesiculation of the dough. I mean that the friction of the dough upon the side of the dough-tap, caused by the heavy pressure exerted from within the mixer, would tear the dough and injure the little cells which makes the bread light. This affects the quality of the bread materially.

670 Int. 15. What do you say of the importance of proper speed in kneading?

Ans. The speed with which I run my mixing shaft, under the direction of Mr. Perry, was 65 revolutions a minute, and I have run it fifteen minutes, to complete the kneading of the dough. The

result of this was, that whereas the temperature of the flour and water before kneading commenced being usually about sixty-five degrees temperature. When the kneading was completed, the temperature of the dough has often been as high as ninety-five degrees. This high temperature causes the carbonic gas to leave the dough much quicker than it would under a lower temperature, besides the liability of the formation of undesirable chemical change in the materials contained in the mixer.

Int. 16. Would a low speed be practicable with the apparatus described by the Perry & Fitzgerald patent?

Ans. It would not. The speed stated in the answer to the 15th interrogatory is the lowest speed desirable with the apparatus described in the Perry & Fitzgerald patent.

671 Int. 17. What do you say, then, as to whether or not the specifications of the Perry & Fitzgerald patent described a practical and successful kneading apparatus?

Ans. I should say they do not.

Int. 18. What directions are given in that patent as to the amount of gaseous pressure?

Ans. The patent seems to anticipate the requirement of an excessive pressure of carbonic acid gas, but does not state how much or little is desirable to attain good results. Under the direction of Mr. Perry, I worked my machinery with a pressure seldom less than one hundred and sixty-five pounds to the square inch. I regard this almost disastrous to a practical, economical working in the hopes of producing good bread. The improved aerated bread now manufactured in Boston is made by the use of only twenty-five pounds pressure upon the square inch.

Cross-examination.

Interrogatories by George M. Lee, esq., of counsel for the complainant:

Cross-int. 1. Does Hebert exclude the atmospheric air from his mixer?

Ans. I think he does not speak of it.

672 Cross-int. 2. Does Hebert not speak of the atmospheric air being left in the mixer?

Ans. I do not remember.

Cross-int. 3. Do you remember this expression in his patent: "The dough is composed of dry flour, distilled water, carbonic acid gas, and atmospheric air?"

Ans. I do not; but I have no doubt a machine, worked under his patent or any other patent with which I am conversant, would work with more or less atmospheric air; for in practice a perfect vacuum is seldom sought, and more seldom attained.

(Complainant's counsel objects to all the answer except the words I do not, as irresponsive to the question, and containing an unasked opinion, and moves to rule it out.)

Cross-int. 4. Does Hebert contemplate excluding atmospheric air from his mixer, or does he provide any means of exhausting the air from the mixer?

Ans. Not having examined Hebert's specification for some time past, I cannot speak with confidence on this point.

Cross 5. Do Robinson & Lee mix in an open mixer?

Ans. I understand the Robinson & Lee patent to be continuous in receiving and discharging bread-stuff, and that the opening
673 and shutting of the apparatus is intermittent. If I am correct in this understanding, there are intervals when it is open, and also when closed. Thus, at times, I understand it to be air-tight, and at other times not.

Cross-int. 6. Have Robinson & Lee provided any mode of exhausting their mixer of atmospheric air during any entire process of mixture?

Ans. Not as I understand it.

Cross-int. 7. Is it in the contemplation of their patent that the atmospheric air will mix itself more or less with their bread in the process of kneading?

Ans. I think such would be the result of working their patent.

Cross-int. 8. Has Danglish in his patent any mode of discharge for his dough, whereby he fixes the size of the loaf at its discharge, and how in this respect does he compare with Perry & Fitzgerald?

Ans. The Danglish patent provides for one continuous discharge of each batch, which, to my mind, is not contemplated to place in the oven in that form. In this patent it is mentioned that a slide is opened, and the dough falls or is forced out in a proper
674 trough or vessel provided to receive it. In the Perry & Fitzgerald patent the dough is forced out of the discharge pipe, and the operator cuts it off in pieces of the required size to form loaves.

Cross-int. 9. Does the Danglish patent contemplate that sufficient dough for a single loaf will afterwards be separated by hand from the discharged and kneaded mass after it has been discharged into the trough?

Ans. I suppose it does.

Cross-int. 10. Does the Danglish patent exhaust the air from the mixer, or provide any mode of exhausting the atmospheric air therefrom?

Ans. I do not uuderstand that it does.

Cross-int. 11. Does the Danglish patent contemplate that the atmospheric air will remain in the mixer while kneading?

Ans. I do not think it does.

Cross-int. 12. How is the air, when the vessel is closed, in the Danglish patent exhausted from the vessel before or during the kneading process?

Ans. I see in the patent no method described for doing this.

675 Cross-int. 13. Have you seen either of these three English machines of Hebert, Robinson & Lee, or Danglish work? If so, which and where? State whether in Europe or America.

Ans. I have seen neither of them at work as described in the patents here submitted.

Cross-int. 14. Where did you make the aerated bread of which you have spoken?

Ans. In Boston, Mass.

Cross-int. 15. How much right did you obtain under this Perry & Fitzgerald patent? when and who of? State the amount of purchase money.

Ans. Boston, and a radius of 20 miles around Boston. I purchased it of James Perry, in the autumn of 1861. Five hundred dollars was the amount of purchase money. I also engaged to pay him a royalty of 25 or 30 cents a barrel of flour used.

Cross-int. 16. Had you previous experience in dealing in or using patents before said purchase?

Ans. I had.

Cross-int. 17. Did you read and examine this Perry & Fitzgerald patent before you bought this right by the contract aforesaid?

676 Ans. I think I did.

Cross-int. 18. Did you not then understand that this patent contemplated exhausting the atmospheric air from the mixer before pumping gas into the mixer?

Ans. No; I never discovered that feature in the patent until within a year or so, nor had I until then heard it spoken of as being contained in the patent.

Cross-int. 19. Had the idea entered your mind when you conversed with Fitzgerald, as before stated?

Ans. It had but a short time before.

Cross-int. 20. Do you now understand that the Perry & Fitzgerald patent contemplates exhausting the mixer of its atmospheric air before pumping in the gas for mixing?

Ans. I do not, except under certain conditions.

Cross-int. 21. How much did you invest in building, machinery, and capital, to make this aerated bread, at Boston, previous to about a year since, and before you discovered this feature of the patent?

677 Ans. About twenty-five thousand dollars in building, and about an equal amount in machinery, apparatus, and so forth. This was my first outlay to about May, 1863. I expended about ten thousand dollars afterwards in experimental endeavor to make the bread acceptable to the public before I abandoned that method of making the bread. I don't remember exactly the amount of my investments as above stated; they may be understated.

Cross-int. 22. Does this patent and drawing of Perry & Fitzgerald describe more than one kind of mixer?

Ans. I think not.

Cross-int. 23. Does not that mixer have an exhaust cock attached, marked *m*?

Ans. It does.

Cross-int. 24. Being familiar with patents and machinery when you began to invest in this patent vessel so large a fortune, how did this exhaust cock *m*, and its purpose come to escape your attention?

Ans. I was informed that the essential element of the Perry & Fitzgerald patent was that of making bread by the use of carbonic gas under pressure, and that the patent was broad in that respect; whatever investigation of the patent I made before negotiating was chiefly directed to that point. I never have pursued details in patents. Another reason the exhaust cock escaped my attention was that I never heard any one at that time speak of working the process by exhausting with an air pump, but all within my knowledge practiced excluding the air by means of the pressure of the gas within.

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Cross-int. 25. How many mixers were used in your Boston establishment, before this conversation with Fitzgerald in 1864 & '5?

Ans. Two two-barrel mixers.

Cross-int. 26. Did both have exhaust cocks?

Ans. No, neither; they had valves at the top of the machine, which we opened to permit the internal pressure to force out the air.

Cross-int. 27. Were these mixers under your daily control?

Ans. They were practically.

Cross-int. 28. Did you always understand that these valves, when opened, would be followed by an escape of air, after the gas was pumped in?

Ans. No.

Cross-int. 29. Did you use these two mixers with their valves in your establishment for the years that intervened between your purchase of this patent and the conversation with Fitzgerald, without knowing that their purpose and effect was to let off the atmospheric air from the mixer?

679

Ans. I knew what the valves were placed there for, and used them for that purpose; our most important use of them was at the first batch after washing out the mixer, and when the flour was in any way imperfect as at times I have observed the flour to absorb the gasses of the premises such as from the fire, &c.

Cross-int. 30. Why did you open the valves at the first batch kneaded after washing the mixer?

Ans. Because then there was no carbonic gas left in the mixer, but instead thereof one atmosphere of air.

Cross-int. 31. When this purchase was made, did you understand an air-pump?

Ans. Yes.

Cross-int. 32. What is the usual means or suitable apparatus for exhausting a vessel of air?

Ans. It can be done by the pump, or it can be excluded by introducing the carbonic gas.

Cross-int. 33. When you saw at the bottom of the 3d page in the Perry & Fitzgerald patent a cock "*m*" to be connected with any suitable apparatus for exhausting the vessel (mixer) with air, what do you suppose that suitable apparatus for exhausting this air was meant by the patentee to be?

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Ans. Answering in the light of Mr. Perry's understanding of that clause, I suppose it to be the use of the gas-pump to surcharge the

mixer with carbonic gas, for that is the way he constructed and operated my machines.

Cross-int. 34. Is an exhaust cock used to pump in or out of a vessel? and can you attach suitable apparatus to this exhaust cock to exhaust the air from a vessel, and at the same time make a legitimate use of the exhaust cock?

Ans. An exhaust cock is used for the purpose of exhausting.

Cross-int. 35. Does not the term exhaust cock itself imply that something is to be taken out of the vessel, to which it is attached?

Ans. I so understand it.

Cross-int. 36. Did you ever use an air pump to exhaust either of these mixers, in which you kneaded your bread previous to the winter of 1864 & '5?

Ans. I did in the summer of 1864; that was my first use.

681 Cross-int. 37. When did the Boston Aerated Bread Company, in which you made this investment, cease to do business?

Ans. May 30th, 1865.

Cross-int. 38. How much of the bread was made by using an air-pump to exhaust the mixer?

Ans. I used the air-pump but a few times, as I stopped manufacturing bread under the Perry and Fitzgerald patent the last day of July, 1864.

Cross-int. 39. When did this company begin to make bread in these mixers? and when cease? how much was made, and what was its general quality? how much good? and how much bad?

Ans. Began May 6th, 1863; ceased July 31st, 1864; my greatest daily consumption of flour the first summer, while the bread was a novelty, was about forty barrels, whereas I averaged for the last three months of my business in the summer of 1864 about three to four barrels daily. Its general quality was bad; good bread was an exception.

Cross-int. 40. Did you notice in your bread occasionally or often an offensive, smell which made it objectionable to the consumer?

682 Ans. I cannot say that it was an offensive smell; it had an odor peculiar to and like the aerated bread made in most of the cities; the chief objection was the absence of an odor.

Cross-int. 41. Does the present aerated bread have this peculiar odor?

Ans. All that I have rested out of Boston has.

Cross-int. 42. Did this odor of your Boston bread make it objectionable and unsalable to customers?

Ans. What odor it had, I should say, was objectionable, but the want of some positive odor the more so.

Cross-int. 43. Was considerable of the bread unsold or destroyed on account of its bad quality?

Ans. No very large quantities.

Cross-int. 44. What closed or broke up this Boston company? State whether it was their failure to make good bread, want of profit in the business; what, if any, financial difficulty?

Ans. The general poor quality of the bread contributed largely to the ill success of my former endeavors; the very excessive cost of machinery and apparatus, together with the great liability of derangement and costly repairs, rendered the undertaking likely to
683 prove unprofitable, unless a large demand could be created for the bread; no financial difficulties would exist if the character of the bread stood high, but with the bread as it was, I doubt if I could have conducted the business many months longer without serious loss.

Cross-int. 45. Would this aerated bread yield more weight per barrel of flour than bread made in the old style?

Ans. In one sense it would, but as I understand the spirit of the question I answer that the system of drawing the loaf, as practiced under this patent, often necessitated imparting to the loaf more dough than is desired; this arises from the obligation to give full weight. Another difficulty with this patent is the wasture of dough whenever the dough tap gets by chance partially stopped; another difficulty, the wasture by washing out the mixer, so that, in my opinion, a barrel of flour made into bread under this patent, as operated by me, would not produce as much money as a barrel of flour made by the old bakers' method. The weight of dough made by this method is greater than by that of the common baker; this
684 has been my impression, but I am not positive therein.

Cross-int. 46. Do you still own this patent right, purchased of Perry, before referred to?

Ans. No; I transferred all my interests, relating to bread, to the Boston Wheat and Bread Company in 1865.

Cross-int. 47. Are you still interested in this company to which you assigned the right?

Ans. I am.

Cross-int. 48. Does this company also hold rights under the three English patents referred to, or either of them? If so, state which.

Ans. It holds rights under the Danglish patent.

Adjourned at nine o'clock p. m., to meet at the same place at nine o'clock a. m., March 3d, 1866.

Assembled at nine o'clock a. m., March 3d, pursuant to adjournment, the parties appearing by the same counsel who were present at the hearing in March 2d, as before recited.

Cross-examination of Steuben F. Bacon resumed:

685 Cross-int. 50. Are you agent for Doctor Danglish?

Ans. I am not agent· I am his assignee to the entire right of several patents for the United States relating to his method of manufacturing the aerated bread; the Boston Wheat and Bread Company are my assignees for the same.

Cross-int. 51. What proportion of gas to the air in a vessel is required to extinguish a light introduced into the vessel?

Ans. I cannot answer definitely.

Cross-int. 52. How was the air purified which you used in your mixer, as you have mentioned?

Ans. I have my reasons for not wishing to answer, contemplating a patent for a combination.

Cross-int. 53. Did you purify the air in a separate vessel before introducing it into the mixer, or did you purify it while in the same mixer with the dough?

Ans. I did it both ways, each unlike, and at different times from the other.

Cross-int. 54. When purified in a separate vessel, how did you pass it into the mixer without contact with the atmosphere?

Ans. This question suggests the same objection as a pre-
686 vious one relating to contemplated patent.

Cross-int. 55. Please give me the names of any assistants who aided you in this purification process.

Ans. I had rather not, unless a particular reason is stated.

Cross-int. 56. How did you ascertain and measure the high heat of this dough after mixing?

Ans. With a thermometer, by placing the thermometer in a pan, and drawing the dough upon and around it.

Cross-int. 57. Did this heat vary with the weather and with the degree of coldness or heat of the water introduced? State, in that connection, if you used hot water for mixing in cold weather.

Ans. The flour did vary with the weather; the water used by me does not vary much either winter or summer, but it is generally from fifty-four to fifty-eight degrees temperature at all times when used. I do not remember to have taken the temperature of the dough after kneading but two or three times, and cannot say whether it varied or not with the change of climate, but should think it would.

Cross-int. 58. Does water absorb more carbonic acid gas
687 than air, under the same pressure?

Ans. I cannot say positively, but think it does.

Cross-int. 59. Why did you run so fast in mixing?

Ans. Because advised by Mr. Perry and nearly all the other manufacturers in the United States.

Cross-int. 60. When a machine is made with revolving arms and the work to be done by it is known, is its proper rate of speed a thing well known to a good mechanic?

Ans. I do not understand what is sought by that question.

Cross-int. 61. If great speed is required in running a machine, does it follow that the machine should be made stronger in proportion to the speed required?

Ans. In running some machinery it would require to be made stronger, if a high rate of speed is sought; but in the manufacture of the aerated bread I have observed that a high rate of speed could be attained with a lighter construction of machine than though a low rate of speed be sought.

Cross-int. 62. How have the various mixers you have seen differed in size? How small was the smallest and how large the largest?

688 Ans. The smallest, quarter-barrel of flour capacity; they varied up to two and a half barrels capacity.

Cross-int. 63. Would you make the same sized hole for the discharge of dough in each of these machines or enlarge the whole as you enlarged the mixer?

Ans. If I desired to make one-pound loaves in both the quarter-barrel machine and the largest machines, I make the discharge identically the same in each case. In the light of past experience, I should enlarge the discharge passage of the dough as I desired to enlarge the loaf in all machines.

Cross-int. 64. Did you, subsequently to your contract of purchase before mentioned, buy out Perry's remaining interest in this patent? If so, when, why, and for how much?

Ans. I did, January 6th, 1865; I promised to pay him at my convenience about fifteen hundred dollars, for which he held my notes, given as advanced royalties at the time of my original negotiations with him in 1861. I also promised to give him about one thirtieth of the interest contemplated in my future business; these payments were promised in return for the conveyance to me of other property and considerations, all of which was lumped. My reasons for this
689 purchase were my friendship for Mr. Perry; my sympathy for him in his misfortunes. I also supposed at that time that the rights for which I was negotiating with him had some value; and furthermore, I desired to obtain my notes which he held as above stated. These interests have also been assigned to the Boston Wheat and Bread Company.

Cross-int. 65. Do you now exhaust the air from your mixer in making bread?

Ans. We do.

Cross-int. 66. What quality of bread do you now make, to wit: is it very good or very bad?

Ans. It is very good.

Cross-int. 67. Please state whether in about 1861, and before you started the Boston Aerated Bread Company, or about what time, you had a conversation with D. B. Fuller, in New York city, about this Perry and Fitzgerald patent, wherein its contrivances to exhaust the the air were spoken of, and state what was said by you and Fuller then about that feature.

(Objected to as irrelevant.)

Ans. I had an interview with Mr. Fuller at the time stated, but not in relation to the Perry and Fitzgerald patent, or any features contained in it; our interview was of a general character stat-
690 ing that I had concluded to go into the manufacture of this bread in Boston; the only point to our interview was the one which caused the interview, namely, I desired his views regarding the McKenzie oven, which I had understood he was to use in the manufacture of this bread in Buffalo.

Cross-int. 68. Did you have such conversation about exhausting the air by said Perry and Fitzgerald patent with Mr. Fuller at Buffalo about the time referred to?

Ans. I do not remember any conversation with any person whatsoever upon the subject of exhaust at any time previous to July 20th,

1864, excepting Mr. Perry and my assistants in the construction of my machinery in Boston; on the 20 July, 1864, there was a conversation of the patentees and manufacturers of aerated bread, in the United States, held at the Fifth Avenue Hotel, New York, at which all questions relating to this manufacture were freely discussed, on this occasion Mr. Fuller was present, and was the only person out of the twelve present who expressed his views of the necessity of exhausting the air from the mixer by the pump.

691 Cross-int. 69. About the time you began to make this aerated bread, were you not at Buffalo, and do you not remember then seeing in Mr. Fuller's possession an exhaust pump, which did not work well upon a mixer? And do you remember a conversation between yourself and Fuller about this, in which the existence of this exhaust pump in the Perry and Fitzgerald patent was spoken of and commented upon by you and Fuller? If so, give what was said by either as near as you can.

(Objected, to first, because it is irrelevant; second, because the subject to which it relates was called out by the complainant on cross-examination, and cannot form the foundation of an attempt to contradict this witness; and third, because the Perry and Fitzgerald patent contains no exhaust pump nor any reference to one.)

Ans. I saw Mr. Fuller at Buffalo, but have no recollection of conversation relating to the subject of exhaust. It has never seemed to my mind to have been a subject of importance among the various manufacturers of this bread, and I never attached any importance to it during the working of my establishment. I will not swear that the interview did not take place, but I do swear, that until the 20th of July, 1864, I did not know that air was exhausted in the manufacture of this bread by any one.

692 Cross int. 70. State if you have ever declared in the presence of D. B. Fuller, or any other person, your intention to destroy and break down this Perry and Fitzgerald patent?

Ans. I never have; I have stated to him and others that I was in the possession of evidence that would invalidate the patent of Perry & Fitzgerald, and that I did not believe it was worth the parchment upon which it was written. I have also invariably stated to him and them my deprecation of proceedings against the patent, and expressed the opinion that it would be greatly to the interest of myself and all others engaged in this manufacture, to maintain the apparent strength of this patent and not throw open to the public, what is now supposed by them to be a bar to their making aerated bread. I am not aware of stating any other than this view of the subject.

Cross-int. 71. Do you know that the Long Island Bread Company, of Brooklyn, working under this Perry and Fitzgerald patent, before you began used an air-pump to exhaust their mixer?

Ans. I do not.

Cross int. 72. Have you sold to the defendant a right under the Danglish patents?

693 Ans. No; the Boston Wheat and Bread Company have sold

to Cornelius Kendall, Kendall of Chicago, and James S. Kendall of New York city, the right to make the improved aerated bread under Doctor Danglish patents for the county of Cook, Illinois. This was in the summer of 1865.

Cross-int. 73. What was the purchase price?

(Objected to as irrelevant.)

Ans. I decline stating.

Cross-int. 74. Are these Cornelius Kendall and James S. Kendall sons of the defendant?

Ans. I do not know. I never saw the defendant.

Direct examination resumed.

Int. 1. Several questions have been put to you in cross-examination as to the comparative excellence of the bread made before you went to Europe, and since your return. State whether, in your opinion, the failure to make good bread, before you went to Europe, had anything to do with the fact that you did not exhaust the air in the mixer after the charge of flour and before the introduction of the gas?

Ans. I do not think it did.

Int. 2. I understand you to say, that previous to your
694 departure for Europe you did apply an exhaust pump; state whether or not you succeeded in making good bread by that change from your previous mode of working?

Ans. I did not.

S. F. BACON.

7. Deposition of Charles S. Belcher as follows, to wit:

Having adjourned at half past eleven o'clock a. m., to meet again on Monday March 5th, at nine and a half a. m.

MONDAY, *March 5th, nine and a half a. m.*

Hearing resumed pursuant to adjournment, the parties in the case appearing by the same counsel as at the hearing on March 3rd.

Deposition of Charles S. Belcher.

Charles S. Belcher, of lawful age, having been first duly examined, cautioned, and sworn by me, as hereafter certified, deposeth and saith, as follows:

(Interrogatories by Samuel S. Fisher, esq., of counsel for the defendant.)

Int. 1. State your name, age, residence, and occupation.

Ans. Charles S. Belcher; age is thirty-three; residence, Brooklyn, New York. I am one of the agents for the Aerated Bread Company
695 at Albany, treasurer of the Boston Wheat and Bread Company, and financial manager of a silk house in New York.

Int. 2. State your experience in the manufacture of aerated bread; when and where did you commence such manufacture, under what patent, and to what extent?

Ans. I commenced manufacturing bread for the Aerated Bread Company of Albany on the 6th of February, 1862. That company having obtained a license from James Perry of Brooklyn, assignee of Perry & Fitzgerald, and Bogart, for certain territory of the United States, under the Perry & Fitzgerald patent issued March 9th 1858, the only facilities I had for gaining a knowledge of the working of the patent was what I obtained from observation at the establishment of Requa & Plumb, 9 and 11 White st., Brooklyn, and at the establishments of James A. Requa, 4th st., corner of Lafayette Place, New York, and Van Riper & Camp, Philadelphia, all of which manufactories were conducted under the patent of Perry & Fitzgerald I say these were my only facilities, because Mr. Perry, our licensor under this patent, was unable or unwilling to give any information in regard to the working of the patent. The Albany establishment was
696 put up in accordance with the information obtained at the three places mentioned, selecting that mode which I considered best of the three; the difference at these establishments were of detail and not of principle. There was no difference in the principle. Requa & Plumb of Brooklyn sold out to W. F. Plumb; he failed and his establishment was sold to the Long Island Aerated Bread Company, and I took charge of that establishment about the 15th of April, 1863, as superintendent, and commenced the manufacture of bread about the 1st of May, and continued till about the 15th of January, 1864. When the company, not being satisfied with their investment, converted their property and leased the place for a stable, to which use it has been put and is now used. About the first of August, 1865, I became treasurer of the Boston Wheat and Bread Company; they are working under the Danglish patent, and I still continue in the same position.

Int. 3. State why you did not rely upon the patent of Perry & Fitzgerald itself in the construction of your works?

Ans. Because to my mind there was [was] not sufficient in
697 the specification of that patent to enable any one to put up an establishment and work it.

Int. 4. State what conversation, if any, you have had with either of the patentees in relation to the value of the specification of the Perry & Fitzgerald patent as a guide for a working establishment?

(Objected to by the complainant for incompetency.)

Ans. None that I remember.

Int. 5. What conversation, if any, have you had with either of the patentees in relation to the circumstances under which the patent was brought out or obtained?

(Same objection as above.)

Ans. Mr. Perry informed me that the working of the patent was premature; that it was not, and never had been, a sufficient state of perfection to work satisfactorily; that good bread could be made with flour, water, salt, and carbonic acid gas alone; that he knew what would make the thing a success, but it would require time and money, and the thing entirely in his own control to perfect it.

Int. 6. What experience, if any, have you had in the manufacture

of aerated bread by mixing the dough with carbonic acid gas
698 under pressure without the use of an air-pump for exhausting atmospheric air?

Ans. From about the 1st of January, 1863, until about the 1st of January, 1865, all the bread we made was made without the use of an air-pump, with equally, if not more satisfactory results than if we used one. Subsequent to January, 1865, having our attention again called to the air-pump from English information, we fitted up a large one, which we have since used with very satisfactory results; all the bread which was made under my superintendence for the Long Island Aerated Bread Company was made without the use of an air-pump.

Cross-examination.

Cross-interrogatories by Geo. W. Lee, esq., of counsel for complainant.

Cross-int. 1. Does the Boston company, of which you are treasurer, hold a right under this Perry & Fitzgerald patent?

Ans. They do.

Cross-int. 2. How much have you contributed towards the purchase of this right?

Ans. I am two thousand dollars of stock in the company.

699 Cross-int. 3. Does the Boston Wheat and Bread Company always use an air-pump to exhaust their mixer in the manufacture of bread?

Ans. They do.

Cross int. 4. Did you put any money into the first Boston Aerated Bread Company? and if so, how much?

Ans. None.

Cross-int. 5. Who was superintendent of the Albany Aerated Bread Company?

Ans. Charles S. Belcher, and Edward J. Larrabee, agents for that company.

Cross-int. 6. Does Larrabee still continue the manufacture at Albany?

Ans. Belcher and Larrabee still continue to manufacture for the company there.

Cross-int. 7. Does this company hold a right under the Perry & Fitzgerald patent?

Ans. They hold a license under that patent from James Perry.

Cross-int. 8. How much did it cost?

Ans. I can't distinctly remember; there was a payment down and a royalty of 27½ cents a barrel of flour, which has since been considerably modified.

700 Cross-int. 9. Has this company rights under the Danglish patents?

Ans. They have not.

Cross-int. 10. Does this company use an air-pump to exhaust their mixers?

Ans. They do now; they did from the time they first began to

manufacture till about Jan. 1st, 1863, and have done so since about the first of Jan., 1865; in the interval we found that we could do better without the air-pump than with it.

Cross-int. 11. What quality of bread does the Albany company produce and how much?

Ans. The bread is good; we manufactured last year an average of about twenty barrels per day for all the working days of the year.

Cross-int. 12. Who manufactures aerated bread at New York?

Ans. I don't know that any one does; Church & Foster did to my knowledge up to about a year ago.

Cross-int. 13. Had they rights under this Perry & Fitzgerald patent?

Ans. I don't know.

Cross-int. 14. Do you know whether they used an air-pump
701 to exhaust their mixers?

Ans. No, I do not.

Cross-int. 15. What kind of bread as to quality did the Boston Aerated Bread Company produce?

Ans. I have seen very good bread of their make, and have also seen very bad bread; further, I can only give impressions, because I was not here sufficiently to give the general run.

Direct-examination resumed.

Int. 1. How did the quality of bread produced by the Boston Aerated Bread Company compare with that of other establishments at that time?

Ans. What I saw of the bread from the Boston Aerated Bread Company was not as good as that produced at Albany, but quite as good as the general run of other New York aerated bread.

Int. 2. In the schedule of the property turned over by Mr. Bacon to the Boston Wheat and Bread Company, at what was the license under the Perry & Fitzgerald patent valued?

(Objected to as incompetent by complainant.)

Ans. No value.

Int. 3. How do know this fact? Did you make any examin-
702 ation of the schedule at the time of the transfer? and if so, in what capacity?

(Same objection as above.)

Ans. I examined the schedule of the property as one of a committee of the company, appointed for that purpose; the said committee were unanimous in their opinion that the Perry & Fitzgerald patent had no value.

CHAS. S. BELCHER.

Also at the same time and place Steuben T. Bacon recalled, and asked the following question, by S. S. Fisher of counsel for the defendant.

S. T. Bacon recalled.

Int. 1. Do you wish to make any correction or qualification of your answer to cross-interrogatory 64?

Ans. After the words "that the rights for which I was negotiating with him had some value," I wish to add, "not having at that time seen the English patent of Robinson and Lee."

S. T. BACON.

UNITED STATES OF AMERICA,
District of Massachusetts, City of Boston ss:

703 I, Charles F. Walcott, special examiner in the cause mentioned in the caption to these depositions, do hereby certify that the above-named Steuben T. Bacon and Charles S. Belcher were duly examined and cautioned by me, and duly sworn to tell the truth, the whole truth, and nothing but the truth, in the cause mentioned in the caption, and that said depositions were reduced to writing by me in the presence of said witnesses, and by them subscribed in my presence; that the taking of said depositions was commenced at my office in the city of Boston on the second day of March, and continued at the same place by adjournment from day to day as above noted until the fifth day of March, A. D. 1866, at eleven and a half o'clock, a. m., when they were completed.

Witness my hand this fifth day of March, A. D. 1866.

CHARLES F. WALCOTT,
Special Examiner.

Fees $25.

[5 ct. Int. Rev. Stamp cancelled.]

704 Which was all the evidence produced or heard on the final hearing.

Evidence offered on exceptions to Master's report of damages, &c.

Afterwards, on the hearing of the exceptions to the master's report of damages, &c., the following additional evidence was read and considered, to wit:

On the part of the complainant—read by complainant:

1. *The deposition of C. B. Ayer's, filed Oct* 3, 1866.

Deposition and the stipulation called for preceeding Ayer's as follows, to wit:

705 Circuit Court of the United States, northern district of Illinois.

Deposition.

JOSEPH M. DAKE
vs.
ORRIN KENDALL. } In Chancery.

We hereby agree to admit upon the hearing in the above-entitled

cause, that the standard weight of a barrel of flour is one hundred and ninety-six (196) pounds.

GOUDY & CHANDLER,
Solr's for Complainant.
WOODBRIDGE & GRANT,
For Def't.

Deposition B. C. Ayer.

Deposition of B. C. Ayer, taken on the fifth day of October, A. D. 1866:

B. C. Ayer, being duly sworn to testify to the truth, the whole truth, and nothing but the truth, makes answer as follows to the fol- interrogatories:

1 Q. State your name and residence?
A. B. C. Ayer; Chicago.
2 Q. Have you worked for Mr. Kendall at making aerated bread?
A. Yes, sir.
2 Q. How much water did Mr. Kendall use for making aerated bread at the time you commenced working that kind of bread for him?
706 A. I was told by Mr. Kendall's son, Cornelius, and his operators that they were using one hundred and sixty pounds of water to a barrel of flour.
4 Q. After you commenced working for Mr. Kendall how much did you use?
A. I cut it down gradually until, I think, my average was about forty pounds of water to a barrel of flour.
5 Q. Is that about a proper average for baking good bread in that way?
A. I think it is.

C. B. AYER.

Subscribed and sworn to before me this fifth day of October, A. D. 1866.

[SEAL] JAMES T. ELY,
U. S. Com.

707 I, James T. Ely, U. S. Com'er in and for the northern district of the State of Illinois, hereby certify that the foregoing depositions of Philip Dunn, Charles L. Woodman, Wesley Smith, S. W. Hull, Cornelius Kendall, Edward K. Kendall, Orrin Kendall, and B. C. Ayer, were taken before me at the various times heretofore mentioned by the agreement of the said parties, complainant and defendant, in said cause, and that said depositions were reduced to writing by me, and duly signed and sworn to by said witnesses respectively before me.

Witness my hand and seal this nineteenth day of November, A. D. 1866.

[L. S.] JAMES T. ELY,
U. S. Com. Nor. Dist. Ill.

[5 cent revenue stamp cancelled.]

Endorsed, filed Nov. 19th 1866.

WILLIAM H. BRADLEY, *Cl'k.*

708 The depositions of Philip Duun and L. Woodman, as follows, to wit:

709 *Caption of Commissioner to depositions of P. Dunn, Ch. Woodman, for compl't, and W. Smith, S. W. Hull, C. Kendall, E. K. Kendall, and O. Kendall, for def't.*

Be it remembered that the following depositions of Philip Dunn, Charles L. Woodman, Wesley Smith, S. W. Hull, Cornelius Kendall, Edward K. Kendall, Orrin Kendall, and B. C. Ayer were taken before me, James T. Ely, United States Comm'r, in and for the [in and for the] northern district of the State of Illinois, at the said city of Chicago, to be read in evidence upon the hearing of a certain cause pending in the Circuit Court of the United States for the northern district of Illinois upon the chancery side thereof, wherein Joseph M. Dake is complainant, and Orrin Kendall is defendant; and that said depositions of Philip Dunn, Charles L. Woodman, and B. C. Ayer were taken on the part and behalf of said complainant, and those of Wesley Smith, S. W. Hull, Cornelius Kendall, and Edward K. Kendall, Orrin Kendall were taken on the part and behalf of said defendant; and that said depositions were taken before me, at the times hereinafter mentioned, by the consent and agreement of the said panties, complainant and defendant, and that the said several witnesses, before giving their said witnesses respectively, were first duly sworn by me to testify the truth, the whole and nothing but the truth; and that the said depositions were reduced to writing by me, and signed by the said witnesses, respectively, in my presence; and
710 that the examination of said witnesses was commenced before me on the tenth day of September, A. D. 1866, and continued from time to time, until the fifth day of October, A. D. 1866, when it was closed; and that the examination of said witnesses and each of them was attended by M. C. Goudy, esq., solicitor for said complainant, and by John Woodbridge jr., esq., solicitor for said defendant.

711 Deposition of Philip Dunn, taken on the tenth of September, A. D. 1866.

Deposition of Philip Dunn.

Philip Dunn, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, makes an answer, as follows, to the following interrogatories:

712 1. Q. What is your name and residence?
A. My name is Philip Dunn; I reside in the city of Chicago.

2. Q. Have you been in the employment of the defendant, Mr. Kendall?

A. Yes, sir.

3. Q. How long?

A. About four years off and on.

4. Q. Have you been engaged in the manufacture of aerated bread for him?

A. Yes, sir.

5. Q. How long were you so engaged?

A. About a year last Christmas.

6. Q. When did you commence, and when did you quit?

A. I commenced about the middle of December, 1864. I think it was, and I quit here about three weeks ago, I think it was. I stuck to him until he shut down.

7. Q. What did you do in the manufacture of that broad?

A. Well, I had the charge of it the most part of the time.

8. Q. State as near as you can the average number of barrels of flour used for the manufacture of aerated bread, since the twentieth day of April, 1865, by him?

A. We were running in April, I think, about from 16 to 20 barrels in the 24 hours, and continued so until about the time that
713 Mr. Dake and Mr. Woodman commenced. That was about July. We were running on the average about twenty barrels —from eighteen to twenty barrels—as near as I can recollect up to that time; and then, after that, about twelve; for some time between ten and twelve, as near as I can come to it; and then, we run from ten to twelve barrels from July until October; and then about from October until we got burned down. The shop in State st. burned down; it was in December, the commencement of December. Well, we run then about seven barrels. I think we had two ovens on State st. up until October, and then they were put in one, and I took charge of the whole crew; and then, until December, about seven barrels; and then we burned down. Then we came down to the shop here on Dearborn st.; commenced the night after Christmas night this last Christmas; and we run from that time about five or five and a half barrels on the average up to the time we quit. That is as near as I can come to it.

9. Q. How many hands were employed baking this kind of bread during that time?

A. Well, in baking the large number af barrels, there was two crews, and then, I had two men and two boys besides myself;
714 and Mr. Ayer had the same until he quit, about July. When there were two crews, there were ten persons employed about it; in baking, twenty or eighteen hands; and there were two crews on State st. until October. Part of the time I worked with one man and two boys; and Mr. Mayhew had one man only and two boys. I worked as economically as I could; with as little help as I could. We had only one barrel mixed at that time. One kneader would take only one barrel of flour on State st. Latterly, one mixer holds two barrels at a time.

10. Q. How many hours per days did the hands work when you had two crews?

A. Ten hours.

11. Q. Was it the same when there has been but one crew?

A. Well, we were not limited to any time. We baked the quantity of bread, and sometimes got through before the day's work would be up. Before the number of hours was expended we had so much to do. and did it.

12. Q. What power was used?

A. Well, I could not say.

13. Q. Was it hand or steam?

A. Steam power.

14. Q. Do you know the capacity of the engine that was used?

A. No, sir.

15. Was it to work anything else except for the manufac-
715 ture of this kind of bread?

A. For part of the time they run the other business with the small engine on State st. a short while; on State st. we used the engine for aerated bread alone.

16 Q. How long did Mr. Kendall have a one-barrel mixer?

A. He had it from December, 1864; at least from when I commenced there. He was running it before that. He had another man there a long time before that, and when I commenced work he run the one-barrel kneader, I should say pretty nearly a year.

17 Q. Since that time he has had a two-barrel mixer?

A. Yes, sir.

18 Q. Do you know the cost of the one-barrel mixer and machinery?

A. No, sir; I don't.

19 Q. Or of the second?

A. No, sir; I might have heard, but I don't remember.

20 Q. Do you know the quality of the price of flour that was used?

A. Well, there was sometimes the best grade, and at other times spring-wheat flour.

21 Q. It varied, did it?

A. Yes, sir; we was always looking after the best flour when we could get it for our own reputation; but we did not happen to get it all the while.

22 Q. What wages were payed to the hands employed by the defendants?

716 A. Well, I worked at sixteen dollars a week part of the time, up to the time Dake & Woodman commenced, and then I got twenty dollars a week. I gave them credit for raising my pay a little.

23 Q. What did the other hands get?

A. Fourteen dollars was the second hand's pay at Mr. Kendall's.

24 Q. How much did the boys get?

A. Well, some five to six dollars; some five and some six.

25 Q. What was the price at which Mr. Kendall sold the aerated bread?

A. I believe it was sold a eight cents the wholesale price, as far as I know; he might have sold it at less; I don't know.

26 Q. Do you know what it was sold at retail in the store for?

A. I don't know how they sold it in the store.

27 Q. How many loaves were made from a barrel?

A. Well, the size varied a good deal from one time to another; about 200 loaves, sometimes not so much, sometimes more, according as they took the notion to put in the weight.

28 Q. Did they make as much as 210 and 213 and 230 loaves?

A. Yes, sir; more than that, sometimes.

29 Q. How much?

A. I think as much as 230 latterly; sometimes 188, sometimes 175, 180, and so on.

717 30 Q. What was the reason for varying the number of loaves per barrel?

A. Well, the weight; sometimes they would order more weight in.

31 Q. What was the reason for changing the weight?

A. I don't know; a notion of their own, I suppose.

32 Q. Did the price of flour have anything to do with it?

A. No, sir, I guess not; it was opposition, I think, a good deal of it.

PHILIP DUNN.

Subscribed and sworn to before me this 10th day of September, A. D. 1866.

[SEAL.] J. T. ELY, *U. S. Com'r.*

Commissioner's fees	$4 00
Witness' fees	2 00
	6 00

Rec'd above from Mr. Goudy, of counsel for complainant.

JAMES T. ELY, *U. S. Com'r*

718 *Deposition of Chas. L. Woodman.*

Deposition of Charles L. Woodman, taken the tenth day of September, A. D. 1866:

Charles L. Woodman being first duly sworn to testify the truth, the whole truth, and nothing but the truth, makes answer as follows to the following interrogatories:

719 1 Q. What is your name, and where do you reside?

A. My name is Charles L. Woodman, and I reside in the city of Chicago.

2 Q. Are you the same Charles L. Woodman who has heretofore testified in this case?

A. I am.

3 Q. How long have you been in the business of baking bread?

A. Since July, 1865; since the 1st of July, 1865.

4 Q. How many loaves per barrel do you get according to that method?

A. It would depend on the weight of the loaf.

5 Q. How many loaves do you make?

A. We average 230 loaves to the barrel at the present time.

6 Q. How much do they weigh?

A. They weigh a pound and a half in the dough, but it shrinks some in the baking; I do not know just how much.

7 Q. Had the same loaves been of the same weight since you have been engaged in the business? Have you said what the variation has been?

A. They have averaged from 210 to 230 loaves per barrel.

8 Q. Is this difference attributable to anything else except the change of weight in the loaf?

A. No, sir, not any; but I might say that some flour will make a little more bread than others; there is a difference. Some
720 flour will take more water than others.

9 Q. How many barrels per day have you averaged for the last three months?

A. We have averaged about 30 barrels per day up to the first of this month, to the first of September; of the last three months up to the time Mr. Kendall quit baking, about 30 barrels of flour.

10 Q. Can you state the average since you commenced baking this kind of bread?

A. I do not think I could give a fair average, for I forget just how much we baked the first six months. I could tell by looking back if it becomes necessary.

11 Q. What has been the cost and expense of baking this kind of bread, according to any specific proportion and quantity?

A. It costs us to bake the bread for gas, and labor, and fuel, about $1 50 per barrel.

12 Q. Are there any other ingredients to be considered in estimating the expenses?

A. Not any.

13 Q. Do the salt not cost anything?

A. Well, I included that, the salt will cost about two cents to a barrel of flour.

14 Q. What is the market price for the bread when baked?

A. We wholesale the bread at 8 cents a loaf, and it retails at 10 cents.

721 15 Q. What does a barel produce where you bake 230 loaves, at 8 cents a loaf?

A. About $18 50.

16 Q. How much of that is nett profit?

A. It would make about $5 50 per barrel. I may have answered that wrong; there is an expense in the wholesaling of it.

17 Q. I want you to give the nett profit over all expenses?

A. That would be about from three and a half to four dollars per barrel nett profit, after the expense of delivering, and all the nett profit would amount to that.

18 Q. What other expense is there besides that which you have named for the materials, that is commissions for selling?

A. I have included all the expenses, selling and baking.

19 Q. You answered that the cost of the labor, gas, fuel, and salt was one dollars and a half a barrel; what other expense besides that does the manufacturer pay, in order to arrive at the nett profits?

A. All the other expense, is the expense of selling and delivering the bread.

20 Q. How much is that?

A. That is about one cent a loaf, making it about two dollars or two dollars and twenty-five cents a barrel.

722 21 Q. State, if you please, what the nett profits are from a barrel, in baking flour, according to the ordinary method.

A. At the present time they are very small.

22 Q. Well, since the 1st of April, 1865?

A. I do not think it will exceed one dollar and a half per barrel; through that length of time flour has been pretty high, and bread has been sold pretty low, according to the nett profits on flour.

23 Q. State what is the average nett profit then since the 20th of April, 1865, in baking bread under the patent described in this case.

A. I think it has been from three and a half to four dollars per barrel.

24 Q. You have stated the nett profits, and that the number of loaves have averaged from 210 to 230 per barrel; state whether this variation has made any difference in the nett profits or not.

A. Not any; that is the object of changing the weight of the loaf, to keep that about the same.

25 Q. How long have you been in partnership with the complainant in this case?

A. Since the first of July, 1865.

26 Q. Is that the same time you commenced baking this bread?

A. It is.

723 27 Q. What was the capacity in the establishment owned by yourself and the complainant for baking aerated bread at the time you commenced?

A. At the time we commenced it would be about forty barrels a day. We commenced with that capacity.

28 Q. Have you increased that capacity at any time? and if so, how much?

A. We doubled the capacity just about one year ago.

29 Q. Have you been able to bake at about the rate of 80 barrels per day since that time?

A. We never have had a demand for that amount.

30 Q. Have you the capacity to bake for that amount, if the demand had reached that point?

A. We have for one year;

31 Q. Have you baked to the full capacity of the establishment at any time since you commerced?

A. We never have baked over 40 barrels per day since we commenced?

32 Q. Did you run up to forty barrels prior to the time you doubled the capacity?

A. We never exceeded over 30 barrels per day up to that time.

33 Q. In what market have you sought to dispose of the manufactured aerated bread?

A It is pretty much confined to the city, yet we have sent bread to different towns outside the city during the summer, but the large amount of it is sold in the city.

34 Q. Does it all lay in the county of Cook?

724 A. No, sir; we have sent some out of the county, but not a great deal; it is mostly within the county of Cook. We have sent some to Evanston.

35 Q. That is in the county?

A. I know, but we have sent some outside of the county.

36 Q. Is there one person within the limits of the county manufacturing aerated bread by the patent prescribed by the witness, except Dake & Woodman and defendant, Kendall, since the 20th of April, 1865.

A. There never has been.

37 Q. Within what market has the defendant, Kendall, sold and disposed of the bread manufactured by him?

A. I do not know that he has sold any outside of the city within the last year.

38 Q. State whether or not there has been a competition between the complainant and defendant in the manufacture of this bread since the 20th of April, 1865?

A. There has been up to within about three weeks.

39 Q. How did it cease at that time?

A. Mr. Kendall sold their business to S. W. Hull & Co., and for the last three weeks they have been buying bread of us, and have not been manufacturing themselves.

40 Q. When the defendant stopped manufacturing the bread, was there any increase on the demand upon Dake & Woodman?

A. There was.

725 41 Q How much was that increase?

A. Our increase, I do not know what it has been this week, but for the last two weeks it has been from six to eight barrels of flour per day, averaging about eight barrels. I have got that wrong, the average has been about eight; it has been from seven to nine barrels along, but the average has been about eight barrels per day of flour for the last week and the week before.

42 Q. How much have you supplied to the successors of the defendant during that time?

A. About 1,500 loaves per day.

43 Q. At what price?

A. We have sold to them for 6½ cents per loaf.

Q. In selling at that price, what are your nett profits?

A. They are about from 2½ to $3 per barrel. They take about the rate of between six and seven barrels a day, made up into bread?

Q. Has there been any increase in the demand since Kendall stopped baking, over and above what his successors have taken?

A. There has been of about, well, in the neighborhood of about

1,000 loaves per day by our own teams, and other bakers that have purchased from us, making an increase of about eight barrels of flour more since then every day.

726 Q. Since the 20th of April, 1865, where has the defendant carried on business of manufacturing and selling bread?

A. On the corner of Dearborn and Washington streets, in the city of Chicago, in the county of Cook, in the State of Illinois.

Q. During the same, where has the complainant been carrying on business?

A. In the same city and county, in the rear of McVicker's theatre.

Q. How far are the two places of business separated from each other?

A. Just one block and a half.

Q. As the business has been conducted by the plaintiff and defendant during that time, how has the bread been disposed of according to what system?

A. We have delivered the bread, except what we have retailed in the store, to an agent who has charge of our wagons. Mr. Kendall, I think has run his own wagons, delivering his bread in the same way, but owns his own wagons and runs them himself

Q. Is there any considerable portion, and if so, how much sold at retail in the store?

A. We average, I think, about 400 to 500 loaves per day in the store the week throughout.

Q. Do you know what the average amount disposed of by the defendant in his store has been?

727 A. I do not.

Q. Is there any difference in the commissions or expenses of selling and delivering where the manufacturer runs his own wagons, or employs, as you do, a general agent?

A. I do not think there is much more. Mr. Kendall claimed to me that he could run the wagons cheaper than the commission that we allow; though, myself, I do not think there is much difference however. The agent has to make a profit to carry on the business, but I think he can do it cheaper than we could to look after it ourselves. The agent pays us seven cents a loaf for all the bread he takes out—the aerated bread.

728 Cross-examination by Mr. Woodbridge:

Q. Have you not a large building, with much machinery, employed in your aerated bread business?

A. We have.

Q. How much did the building and machinery cost?

A. It would be impossible for me to tell the exact amount.

Q. About how much? I don't care as to a dollar or so.

A. I think the machinery for the manufacture of aerated bread, has cost some $2,500, and the building from $20.000 to $30,000. I could not say how much. The building is used for the manufacture of crackers and other kinds of bread. The machinery, with the exception of what I have mentioned, is about $2,500, and is used for

all other kinds of business, that is including the engine, boiler, and building.

Q. What proportion does the aerated bread business bear to the other business transated in that building?

A. We were baking from thirty-eight to forty barrels of flour a day; now, in the aerated bread, we are baking about eighty barrels of flour a day into crackers and other kinds of bread.

Q. How long since you commenced baking crackers?

A. We commenced last December.

Q. How long have you manufactured 80 barrels of flour into other kinds of bread and crackers?

A. For about six weeks.

729 Q. Previous to that time, how much did you manufacture?

A. From 40 to 50 barrels.

Q. Can you say that about one-half of the capacity of your building was employed in the aerated bread business?

A. No, sir; not one-eighth of it was employed in that.

Q. Was not that the principal business transacted in that business up to December.

A. It was at that time we enlarged the building very much, and doubled its capacity, trebled it after that.

Q. Had you not invested more than $20,000 in the building before December?

A. No, we had not up to December.

Q. What is the value of the ground occupied by the building?

A. I think we gave about $3,000 for the lease. It is school property. We gave that bonus. It is a fifteen years lease.

Q. At what rate of rent?

A. The first ground we bought we gave $2,000 bonus, without any taxes or rent whatever.

Q. Without any rent?

A. Yes, sir; without any rent; that was right out for 15 years. We bought about as much more for $1,500, and paid a rental of something like $40 a quarter, about $150 a year.

Q. You have paid $3,500 bonus then in all, $2,000 first, and $1,500 afterwards.

730 A. Yes, sir; and then we paid a rental of $150 at least.

Q. Including the bonus which you have paid, and the rent, has not the building, and what it contained, cost you more than $30,000 before last December—the building and the case?

A. No, I don't think it had. The machinery we have put in since. The cracker machinery is very expenses.

Q. How much does the flour cost a barrel?

A. Our flour varies from $6 to $15 per barrel.

Q. How much does it cost you per barrel, where you make 230 loaves of bread out of a barrel?

A. The flour has averged, for the last three months about $9 a barrel, such as we have used for aerated bread.

Q. In the first estimate, which you made for Mr. Goudy, where

you said your profit was about $5½? please give the figures upon which you base that conclusion.

A. Flour at $9 a barrel; the expense of manufacturing, including help, gas, and, fuel, $1 50, making $10 50; 230 loaves of bread out of a barrel of flour, at seven cents a loaf, gives $16 10. Taking $10 50 from that, leaves $5 60.

Q. Did you not, in making your first estimate, proceed upon the presumption that you received eight cents a loaf, leaving out the matter of delivery?

731 A. No, I did not. I estimated it all at wholesale. The net profit at eight cents, although it averages more money, because that which we sell at the store gets us more money.

Q. What modification did you introduce into your second estimate, by which your profit was reduced from $5 50 down to $3 50 and $4 00 You made three estimates you know?

A. I know the profit was on that which we sold to S. W. Hull & Co., which was 6½ cents a loaf.

Q. When you said you made a profit of five and a half dollars a barrel, did you not leave out the cost of delivery?

A. If I did, I had'nt ought to, for the last figures I give you are correct.

Q. Well,the last figures were only $3 50, and when you made the estimate at $5 50. did you not leave out the cost of delivery?

A. I don't know how I could in that, for this is the statement since I figured it to get it correct. The bread at wholesale is 8 cents, and I have figured it at 7 cents, just what it nets us at the shop. Taking the flour at $9 00, which has been the average at the present time, though flour has been a little higher, it may be costs us a little more than that now, but that has been the average for three months, $9 00 per barrel.

Q. Why did you reduce your estimate of the profits upon a barrel from $5 50 to $3 50 and $4 00?

732 A. As I stated the amount of loaves has varied from 210 to 230 per barrel, and the figures I give now are based upon 230 loaves at seven cents per loaf; and when I reduced it to $3 50 or $4 00, was allowing it to be sold to S. W. Hull for 6½ cents a loaf, which would make a difference, but I take an average of the bread from 210 to 230 loaves, which would reduce it some.

Q. Why then did you say, that in selling S. W. Hull & Co., you only made from $2 50 to $3 00 per barrel?

A. Well, I must have been mistaken. You asked me for the figures, and I put down the figures. These showed what it would be. I made an estimate on it. Those are the figures which are correct, which I give you now.

Q. If you profit, exclusive of delivery, upon the bread would be $5 50 per barrel, and you deduct $2 25 for delivery, how much would your profit then be?

A. That would make it $3 25.

Q. Does it make any difference upon the cost of manufacturing, as the amount which you manufacture? Suppose you manufacture

five barrels, can you manufacture that as low as you manufacture thirty barrels?

A. It would depend upon how a man worked his help. He
733 could do it just as cheap; for instance in Milwaukee, at one time, they used to manufacture their bread in the afternoon, and make about five or six barrels per day. The same help which worked in the morning made the bread in the afternoon. It did'nt cost them then any more to make it, then it would us using the same help right along.

Q. In estimating the expense of manufacture, did you take into account the wear and tear of machinery?

A. I did'nt include that in my estimate of the expense.

Q. Have you made any money in the manufacture of aerated bread since you commenced; and if so, how much?

A. I have made money, but I could not tell how much; our work all runs together; the aerated bread, and the crackers, cake, pastry, and everything is all under one firm, and it is impossible to tell the amount made from any one.

Q. Have you not lost money in your business during the last year?

734 A. No sir; we have not.

Direct examination resumed.

Q. What has been the average cost of flour since the 20th April, 1865; such as you describe as being used in the manufacture of aerated bread?

A. It has been about $9 00 per barrel. We have bought as low $8, and from that up to $10; but we have bought more under nine dollars than over.

Q. Does it cost more to bake at the rate of from 10 barrels to 20 barrels per day, according to the patent in question in this case, than it does to bake twice that amount?

A. Oh, it would require more help to bake twice that amount, but in proportion it would not.

Q. State, if you please, what is a fair valuation of the capital invested in the machinery and room used for the manufacture of aerated bread.

A. Well I think ours would be from $6,000 to $8,000—the aerated bread department.

Q. In making that statement, do you take into consideration the whole or a proportion of the power used in the baking?

A. Only proportional—a part of it.

Q. State what is the power of the engine used by you.

A. It is a 20-horse power engine.

Q. What proportion of that do you calculate is used in the manufacture of aerated bread?

A. About $\frac{1}{3}$ of it.

735 Q. Did you use any of this power during the last summer and fall, for the manufacture of any other kind of bread or pastry than the aerated bread?

A. We changed at that time; we had a smaller engine then, and we changed it and put in a larger one—the one we have in now.

Q. What was the power of the engine prior to the change?

A. We had a twelve horse power first.

Q. What is a fair estimate for the wear and tear of the machinery power, &c., used to manufacture aerated bread in that establishment?

A. Well, I could not tell; we have run ours about a year and a half; I don't say but what it is just as good as it was when we bought it. There is a wear and tear of belts, but that is not very much. The machinery is all heavy iron machinery, and ought to stand for a great many years.

Q. Can you state what a fair rent would be for that part in the establishment, used for the manufacture of aerated bread?

A. We manufactured the bread all in the basement. The place where we do it, probably would not rent for more than three or four hundred dollars a year, being back on the alley; that would be about as much as it would be worth.

736 Q. Do you know the value of the apparatus and the machinery used by the defendant for baking the aerated bread.

A. I don't know exactly what it is; it is not very expensive, because it was much smaller than ours, and bought second handed; I think he paid some three or four hundred dollars at the time for it; I don't know what additions he has made to it since.

Q. Well, you know what a fair price for the apparatus used by him would be after the time he has been running her?

A. I should think not to exceed from $500 to $600 for the engine; the engine he had for other purposes, which he attached to it.

Q. Do you know what the capacity of that engine was?

A. The old engine that they used to use, I think was about twelve horse power; the present engine they are using, I think is about eighteen horse power for running all their work.

Q. Do you know the capacity of the machinery used by him for the manufacture of this kind of bread?

A. I think it is what they call a barrel and a half kneader; we have two barrel kneaders, and two large pumps; they have one pump; I don't know what the capacity of it is.

737 Q. Well, how many barrels a day could be manufactured by the machinery used by the defendant?

A. They have told me they have manufactured from 20 to 23 barrels per day.

Q. State whether or not, according to your knowledge and experience, that would be the capatity of that machinery?

A. I think that would be all that could be got out of it.

Q. How much power would it take to run it?

A. I should think it would take an eight horse power engine to run the kneader when the power is on the mixing; then it requires the strongest power; I should think it would take an eight horse power engine to mix a barrel, or a barrel and a half.

Q. What is the cost of fuel to run such a power?

A. An eight horse power engine ought to run for about $4.00 a day of 24 hours. I used to run a six horse power engine over there in less than that, considerable.

Q. How many men would be required to bake every day from seven to twenty barrels per day with that machinery used by the defendants?

A. Well, that is a considerable bit of lee way, from seven to twenty barrels. Three men and two boys can bake about ten barrels of flour in ten hours, and it would keep them pretty busy—no, I am wrong in that; in ten hours they can bake about from 16 to 18 barrels; we bake as high as 20 barrels in 10 hours with the same men
738 to help—three men and two boys.

Q. How many hours during the past fifteen months has been a day's labor in that business?

A. We caculate to work about ten hours a day.

Q. What has been the average price for wages for three men and twe boys for the last 15 months here?

A. Boys get about a dollar a day, men vary from 15 to 20 dollars a week, of six days to the week; we don't work Sundays; that is about two and a half a day. The foreman that takes charge of it, gets about $20, and the other men would get about $15.00; that would be $10.66 a day for the three men and two boys.

Cross-examination resumed.

Q. How much help would be required to bake seven barrels a day in such an establishment as Mr. Kendall's in ten hours a day?

A. Well, two men and two boys could do it.

Q. How much would be their wages a day?

A. That would be $8 and 16 cts a day, for the two men and two boys?

Q. How much coal would be consumed a day in running the engine?

A. Well they might use the engine exclusively for that, and use one no larger than would be wanted for running that time,
739 and probably it would be about $2½ to $3.00 a day, in a day of ten hours; I was reconing before for 24 hours. Illinois coal is worth about $8 a ton; an engine of that capacity would not use over from $2.50 to $3.00 worth of fuel in a day.

Q. About how much would be the value of the gas required in making seven barrels?

A. The gas would not cost any more proportionately, than (than) making 20 barrels. It would be about from 67 to 70 cents a barrel; that would be about $4.50 for seven barrels.

Q. Ours don't cost over 65 cents a barrel; that would be $4.55 for seven barrels for the gas required in making seven barrels, to run it alone than where you mixed it with other business of course; because your oven is heated, and your heat for the engine is up, and while running it, your expenses is running through the same work and divided between them. Your heat for your engine is all up, and it is more expensive to run it alone, than if it were included with the other business of a bakery.

Q. How much is the best grade of winter wheat and flour worth now?

A. The very best in the market is worth about $15.50 at wholesale, such as Plant's & Cone's mills, in Southern Illinois.

Q. How long has it been worth that much?

740 A. It has been worth about that much during the last year.

C. L. WOODMAN.

Subscribed and sworn to before me this tenth day of September, A. D. 1866.

[SEAL.] J. T. ELY,
U. S. Com'r.

Commissioners fees $14.50. Rec'd from Mr. Goudy counsel for compl't.

J. T. ELY.

741 *Evidence read by the defendant on exceptions to Master's report.*

On the part of the defendant, as follows, to wit:

1. The depositions of Wesley Smith, S. W. Hull, Cornelius Kendall, Orrin Kendall, Edward K. Kendall, and exhibits taken after the final decree was entered before Ely.

742 *Deposition of Wesley Smith.*

Deposition of Wesley Smith, taken on the 24th day of Sept'r, A. D. 1866.

Wesley Smith, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, makes answer as follows to the following interrogatories:

743 1 Q. What is your name, age, residence, and occupation?

A. My name is Wesley Smith; age, going on 28 years; residence, 691 State street, Chicago; my occupation is an engineer.

2 Q. Have you ever been in the employ of Mr. Orrin Kendall? and if so, when did you enter his employ, and how long did you continue with him?

A. I could not tell exactly when I did enter his employ.

3 Q. Was it a year, or several years, or a month?

A. Well, it was going on a year.

4 Q. When did you leave his employ?

A. Well, it has been over a year ago. I do not remember the month now, but it was along in June; a year ago.

5 Q. Was it not about the time Dake & Woodman commenced baking aerated bread?

A. Yes, sir.

6 Q. What business had you been doing for Orrin Kendall just before you left his employ?

A. I was manufacturing aerated bread.

7 Q. What kind of flour did you make use of in its manufacture?

A. Well, we used the best flour that was to be got in the market.

8 Q. Was it spring or winter wheat?

A. Winter wheat.

9 Q. Into whose service did you enter after you left Mr.
744 Kendall?

A. The firm of Dake & Woodman.

10 Q. What business did you do for Dake & Woodman?

A. I manufactured aerated bread.

11 Q. Did you know about Mr. Dake, about that time, making a present to C. B. Ayer, known as "Yankee?" and if so, state all you know about it.

A. Well, Yankee showed me a check one evening; took it out of his pocket-book and showed it to me in the alley at the bake-shop—a check for $500 on the National Bank, with Joseph M. Dake's name signed to it, and he said it was a present to him of $500.

12 Q. That was about a week after you entered the employ of Dake & Woodman?

A. It was a week or two after.

(Question and answer objected to.)

13 Q. When you manufactured the aerated bread for Mr. Kendall did you use the engine?

A. Yes, sir; we used the steam-power.

14 Q. To what other use was the engine put while you were conducting the manufacture of the bread?

A. We did not put it to any other use. I worked nights, and that was all the use they put it to in the night.

15 Q. Was the entire manufacture conducted in the night?

A. No, sir; they made some in the daytime.

16 Q. What proportion was made in the day?

745 A. I could not tell, sir.

17 Q. While you were working the engine, was it put to any other use than making aerated bread?

A. No, sir.

18 Q. How long did you continue with Dake & Woodman?

A. Well, it was nearly a year; about ten months.

19 Q. Did you continue during all that time working in the aerated bread department?

A. Yes, sir.

20 Q. Did you have charge of one gang of men?

A. Yes, sir.

21 Q. During what part of the time did you conduct the business? What part of the day, I mean?

A. Well, I had the night-work to run almost all the time I was there, except about two months, and then changed off to day-work.

22 Q. To what other use was Dake & Woodman's engine put during the night while you were working on the aerated bread?

A. Well, sometimes they would work over-time on crackers; once in a while they would work a night or two in a week, making over-time on crackers. As a general thing it was not put to any other use than the manufacture of aerated bread.

23 Q. In conducting the manufacture of bread for Dake & Woodman, was it your habit when you first went there to exhaust the air?

746 A. Yes, sir.

24. Q. In what manner did you exhaust the air?

A. Steam pumps were used in pumping up the gas back and forth.

25 Q. Did not your pump sometimes get out of order?

A. Yes, sir.

26 Q. Do you remember when they got out of order first?

A. Along last fall. I could not just remember the time they got out of order, so we could not pump from the kneader, but could pump gas well enough, but could not pump it back, consequently could not pump the vacuum out when the pump was out from the kneader.

27 Q. When the pump were so out of order, were you able to exhaust the air from the kneader?

A. No, sir.

28 Q. Did you have any conversation with Mr. Dake at that time about continuing the manufacture?

A. I did, sir.

29 Q. What did you say to him?

A. He came there in the evening. We were on night work then. I told him I did not suppose we could make any bread. We could not exhaust the air out of the kneader, nor pump the gas back. We said we got to have bread, and we would have to waste the gas in the kneader, and having got our dough all drawed out, it did

747 not make any difference about exhausting the air.

30. Q. He said that?

A. Yes, sir; we could not exhaust the air out of the kneader, nor pump the gas back what portion remained in the kneader after drawing our dough off.

30 Q. Did he order you to make the bread without exhausting the air?

A. Yes, sir.

31 Q. Did you continue the manufacture without exhausting the air, and if so, what length of time?

32 Q. Well, it was near a week before we got the pumps in order again, so that we could exhaust the air out of the kneader, and pump the gas back in the receiver.

33 Q. What kind of bread did you make during that period?

A. Good, wholesome bread.

34 Q. In what way did it differ from the bread you usually made?

A. I could not see any difference in the bread.

35 Q. After your pump was repaired, did you always exhaust the air?

A. Well, almost always. Sometimes when in a hurry I would not; and when in no great hurry I would exhaust it all.

36 Q. When you admit you exhausted it, did you always exhaust it thoroughly?

748 A. No, sir.

37 Q. And could you see any difference in the character of the bread?

A. No, sir, I could not.

38 Q. In your opinion, does it make any difference in the bread whether the air is exhausted or not?

A. I do not think it makes any difference what quantity of air is in there. When kneading it and putting the flour down, the kneader is open; of course, it accumulates air in there. I don't know it makes any difference about its being in there. Never could notice any difference in the bread.

39 Q. Did you have any conversation with Mr. Dake last winter about the size of the loaves you should make?

A. Well, he came to me several times, and told me to scale them very light; set the scales at one pound and five ounces, with pan included.

40 Q. What reason did he assign?

A. That flour was very high; had to pay a very high price for the flour, and he was not making much on the bread; was not making much on it, and wanted to get as many loaves as possible out of it—out of the flour. The loaves on an average would not weigh over a pound after being baked.

749 41 Q. What did he say, if anything, about the profits of the manufacturing at that time?

A. Well, I never heard him say anything about the profits, except he was not making anything on it, and to be careful and to scale them as light as he could. Would stand there and caution me once in a while to scale them very light.

42 Q. Were you present at a conversation between Mr. Dake and Yankee upon the same subject?

A. Yes, sir.

43 Q. Please state what Yankee said, and what Mr. Dake said; first what Yankee said?

A. Yankee made the remark that the loaves were too small, and it would break up the sale of the aerated bread; something to that effect. Made the remark that, as a general thing, poor people had to buy their bread, and they would not stand it to pay such a price for a small quantity of bread, and Mr. Drake said if they did not like it, they could go and buy flour. He said it was twelve or thirteen dollars a barrel, and they could make it themselves if they could get it any cheaper.

Cross-examination by Mr. Goudy:

C. 1. Q. When did you say you entered the employ of Dake & Woodman?

750 A. Along about the last of June or fourth of July. I went to work there manufacturing bread—first commenced.

C. 2. Q. When did you leave?

A. Last April sometime.

C. 3. Q. Why did you stop working there?

A. Well, because I did not think I got my rights, doing all the night-work there, learning his men to make aerated bread. He wanted to give another man the preference—give him the day-work; and my health was poor, being up so much at night, and he would

not agree to give me the day-work unless I would take the same wages he was getting. I would not consent to that, and he told me if I did not like it I could leave.

C. 4. Q. Who was doing the day-work?

A. A man by the name of Langdon.

C. 5. Q. What wages were you getting?

A. I was getting twenty dollars a week.

C. 6. Q. What wages did he get?

A. Fifteen dollars, I believe; that is what I heard he got.

C. 7. Q. How long did you make aerated bread for Mr. Kendall?

A. I should think it was nearly a month that I went to
751 making it after Yankee left Mr. Kendall. I took hold of it after Yankee left.

C. 8. Q. Was that the month before you commenced working for Dake & Woodman?

A. Yes, sir.

C. 9. Q. You had no other experience with Mr. Kendall's, except what you acquired in that month?

A. No sir.

C. 10. Q. Where did you make this bread—at what place in the city—for Mr. Kendall?

A. On State street, corner of State and Eldridge Court.

C. 11. Q. Any other kind of bread, pastry, crackers, or anything of that sort, made at the establishment besides aerated bread?

A. Yes, sir, they manufactured crackers there. I don't know about bread, whether they did. They manufactured crackers there after they left this shop over here.

C. 12. Q. At that time, was there one or two crews at work in making aerated bread?

A. Two crews.

C. 13. Q. Did you have charge of one?

A. Yes, sir, I had charge of the night crew.

C. 14. Q. Who had charge of the other?

A. Mr. Dunn.

C. 14. Q. Was the machinery used during any time when you were at work in the State street bakery, used for anything else
752 than baking aerated bread?

A. No, sir.

C 15. Q. Do you know whether it was or not during the day-time when Dunn was in charge?

A. Yes, sir, they made crackers in the day-time.

C 16. Q. What was the capacity of that engine?

A. She was about twelve or fourteen horse power—not over fourteen—a small engine.

C 17. Q. What amount of fuel did it take to run it a day?

A. Two tons of coal for ten hours, to run a day.

C 18. Q. What kind of coal?

A. Illinois coal.

C 19. Q. What was its value at that time?

A. I could not tell what they had to pay for coal at that time.

C 20. Q. How much gas did it take when you worked for Mr. Kendall per barrel to manufacture this kind of bread?

A. I could not tell the value of the gas; never reckoned it up; generally put in a mixture of three gallons of vitriol and eight gallons of marble dust and fifty-two quarts of water.

C 21. Q. What was for one mixture?

A. Yes, sir.

C 22. Q. Do you know how long that would last?

A. It would make about three barrels of flour.

753 C 23. Q. Do you know the cost of these materials?

A. No, sir, I do not.

C 24. Q. What wages did you get from Mr. Kendall?

A. I was getting $15 a week.

C 25. Q. How many hands did you have in your crew?

A. I had two bakers and three boys—two men and three boys.

C 26. Q. Do you know what wages they got?

A. I believe the bakers got $15 a week; the boys, I do not know what wages they did get. I just kept their time for what they worked.

C 27. Q. Did you open the barrels to get the flour, which you used to make the bread?

A. Sometimes I did; had a man there to open the flour, open and shovel it down to me, while I attended to the mixing.

C 28. Q. Was the flour opened in the same room, where you worked?

A. No, sir; it was opened right up stairs, and came down.

C 29. Q. What proportion of this flour did you open yourself?

A. Sometimes I would go up there, and open a barrel, merely knock the heads in; I generally attended to the mixing, while the man shovelled it down.

C 30. Q. What was the brand of the flour that you opened?

754 A. The brand we used was called the "Snowball" flour.

C 31. Q. Wells & Snowball?

A. Yes, sir.

C 32. Q. Where was that manufactured?

A. I declare I could not recollect where it was manufactured.

C 33. Q. Do you know yourself whether it was spring or winter what?

A. Winter wheat; never used anything, while I was there, but winter wheat.

C 34. Q. What brands are recognized as the best winter wheat in this market?

A. Well, I don't know now what brands are.

C 36. Q. At that time?

A. At that time I believe Snowball was recognised as the best brand in the market.

C 37. Q. Do you know anything about Plants?

A. No, I can't remember the brand.

C 38. Q. Don't know anything about Plants flour?

A. No, sir.

C 39. Q. Know anything about Coles?

A. No; might have worked the brand; I cannot remember; we have used so many different brands.

C 40. Q. What other kind of brands, besides the one you have named, did you use?

A. I used "Snowball" about all the time I was there for Kendall; don't recollect of any other kind I used, except that.

755 C 41. Q. What was the capacity of the kneader at Mr. Kendall's?

A. One barrel of flour it would knead

C 42. Q. How many barrels could you bake during your watch?

A. Could bake about nine barrels; that is as high as we could go in ten hours; nine barrels is considered a good night's work.

C 43. Q. Was the size of the loaf varied any, when you were at work for Mr. Kendall?

A. No, sir.

C 44. Q. I will ask you whether bakers as a custom don't vary the size of their loaves from time to time.

A. I could not tell about that; never worked in the baking business until I went to manufacturing aerated bread—machine bread.

C 45. Q. What business was you engaged in before that time?

A. In the business of an engineer.

C 46. Q. How do you know that the brand you have named was the best quality of flour?

A. While working at this shop, I heard Mr. Kendall say to Yankee—Yankee was making bread before we left this shop over here—it was the very highest priced flour he could get. Yankee thought he could not make bread out of any other brand, but "Snowball."

C 47. Q. Did you hear Mr. Kendall make that remark to Yankee, or was it what he had told Yankee?

756 A. I have heard him make that remark to Yankee; it was the very highest priced flour; he had paid the very highest price for it; the best flour he could get in the market.

C 48. Q. That was before you commenced working at it yourself?

A. Yes, sir.

WESLEY SMITH.

Subscribed and sworn to before me this 24th day of September, A. D. 1866.

[SEAL.] J. T. ELY, *U. S. Com'r.*

Commissioner's fees	9 50
Witness' fees	2 00
	11 50

Rec'd above am't from Mr. Woodbridge, counsel for defendants.

J. T. ELY, *U. S. Com'r.*

757 *Deposition of S. W. Hull.*

Deposition of S. W. Hull taken on the 24 day of September, A. D. 1866:

S. W. Hull being first duly sworn to testify the truth, the whole truth, and nothing but the truth, makes answer, as follows, to the following interrogatories:

758 1 Q. What is your name, occupation, and place of residence?

A. My name is S. W. Hull; my age is 34; I reside in Geneva, and my occupation is a baker.

2 Q. Did you not buy out the bakery formerly occupied by Orrin Kendall, on the corner of Washington and Dearborn streets, Chicago?

A. I did, the 23rd of August last.

3 Q. Were you conducting the baking business at this place?

A. Yes, sir.

4 Q. Under what firm name?

A. S. W. Hull & Co.

5 Q. Have you, since you commenced operating the said bakery, had any conversation with Joseph M. Day?

A. I have.

6 Q. About the aerated bread business and the profits resulting from making the same; state what the conversation was?

A. I have had several conversations with him about it; he has told me several times that Mr. Kendall never made anything on the aerated bread.

7 Q. Did he say anything about his willingness for you to manufacture for any length of time?

A. He was not willing that I should manufacture it.

759 Cross-examination, by Mr. Goudy:

8 Q. When did you have this conversation with Mr. Day?

A. Pretty soon after I got into the bakery over there.

9 Q. Did he state whether or not he made anything out of the business?

A. I could not say that he ever did.

10 Q. What was the occasion of this conversation?

A. We were speaking about stopping the baking of it.

11 Q. Did he say to you anything about the profits that could be made by proper management of the business?

A. He said that a man had to bake a large quantity of it in order to make anything out of it.

12 Q. What reason, if any, was there that Mr. Kendall had not made anything from the baking of it?

A. Because he baked so small a quantity.

13 Q. Did he give you any other reason?

A. I do not know as (as) he did.

14 Q. Did he say anything about the business capacity of Mr. Kendall in managing affairs?

A. No, sir.

15 Q. State as nearly as you can just what Mr. Dake said?

A. I could not state it any nearer than I have the general conversation. He seemed to be quite anxious to have Mr. Kendall
760 stop baking.

16 Q. Did he give any reason why he wanted him to stop?

A. Nothing more than that he wanted the baking himself.

17 Q. Did it claim that it was a damage to him?

A. I do not know as he did.

18 Q. Did he give any reason why he would not consent to your baking it?

A. No; no more than he thought he had a right to.

19 Q. He desired to have a monopoly of the business?

A. Yes, sir.

20 Q. Is there any other reason within your knoweldge why he should desire to have the sole monopoly of the business, except the profits from it?

A. I do not know as he had any.

21 Q. Did you ever bake according to his method yourself?

A. No, sir, I never had anything to do with baking, and do not know anything about it.

22 Q. Did you purchase the engine in Mr. Kendall's bakery?

A. No, sir.

23 Q. Did you purchase the machinery?

A. No, sir.

24 Q. What did you buy from Mr. Kendall?

761 A. I bought all the paraphenalia with the exceptions of the aerated bread, the engine and machinery.

25 Q. You did not use steam in manufacturing?

A. We used steam, but we had the privilege of using their engine while we were there.

26 Q. About what was the capacity of that engine?

A. Twenty-five horse-power.

27 Q. Had you any knowledge as to the amount of power which was used in their general business?

A. No, sir.

28 Q. Are you using that engine now?

A. We are.

29 Q. How much fuel does it take to run it a week?

A. About two tons of soft coal a-week.

30 Q. What kind of coal?

A. Illinois coal.

31 What, by working it 24 hours?

A. No, sir.

32 Q. What portion of the 24 hours?

A. I calculate on 10 hours; the engine we have used, used about two tons a-week; perhaps this might use more; I have not taken notice of the matter.

33 Q. Then you do not know how much it does take to run this engine?

A. No, sir, I do not.

762 Re-direct examination, by Mr. Woodbridge:

34 Q. Did Mr. Dake say anything to you about his claim for damages against Kendall for manufacturing aerated bread?

A. He said he offered to settle with Mr. Kendall once—offered to give him $500 to drop all questions of damages, and asked him several times whether he would not drop the thing now, if it could be stopped without any damages. Once he told me he would not say that but he was disposed. The general conversation we had two or three times was that he was disposed to drop the question of damages, as I inferred from his conversation.

35 Q. Did he say when he made this offer?

A. It was after the decision of the court.

36 Q. After the decision?

A. Yes, sir.

By Mr. Goudy:

37 Q. Did he state to you why he offered him $500?

A. No, sir, I do not know that he did.

38 Q. Did he tell you what the entire proposition was at the time when he proposed to give him 500?

A. No, sir; he told me this, that he had so much trouble
763 that time that he would rather give Mr. Kendall $500 than to have any more trouble about it?

39 Q. Did he tell you that M. Kendall refused to accept the proposition?

A. He did.

S. W. HULL.

Subscribed and sworn to before me, this 24th day of September, A. D. 1866.

[SEAL.] J. T. ELY,
U. S. Com'r.

Commissioner's fees	3 50
Witness' fees	2 00
	5 50

Rec'd above am't from def't's attorney.

J. T. ELY, *U. S. Com'r.*

764 *Deposition of Cornelius Kendall, taken on the 24th day of September, A. D. 1866.*

Cornelius Kendall being first duly sworn to testify the truth, the whole truth, and nothing but the truth, makes answer as follows to the following interrogatories:

1 Q. What is your name, age, residence and occupation?

A. My name is Cornelius Kendall, my age is 27 years; I have been in the baking business; my residence is Chicago.

2 Q. Do you know the parties to this suit, plaintiff and defendant?

A. I do,

3 Q. How have you been employed since the 20th April, 1865?

A. In the bakery.

765 4 Q. With whom?

A. With O. Kendall, and Kendall Brothers.

5 Q. Were you cognizant of the aerated bread manufacture conducted by O. Kendall?

A. I was.

6 Q. Have you investigated in order to ascertain the cost of flour, labor and materials employed in the manufacture, and the amount realized from the product of the manufacture of aerated bread?

A. I have.

7 Q. Please state the results of your investigations?

A. I can give a correct statement since the 5th of March last, but before that time the books were not kept so that any body could give a statement. We have paid out for wages of men, from March 5th to August 18th, $1,392 19 cts.; for oil of vitriol, $438 67 cents; for for marble dust, $158 28 cents; for running engine 144 days, half a ton of coal per day, at $8, $576; for heating oven 144 days, half a ton of hard coal, at an average cost of $15, $1,080; for 792
766 barrels of flour, average cost $9 77, $7,737 84 cts.; for cost of manufacture, $11,382 97 cts.; the product of manufacture is 158,400 loaves of bread, at 7½ cts., $11,880; less twelve per cent, cost of delivery, $1,425 60 cents, showing a nett loss of $928 57 cts. during the 144 days. The above does not include the cost of salt, gas light, breakage for machinery, oil for machinery, rent of shop, and loss by waste.

8 Q. Does it include any loss for bread not sold or wasted?

A. No, sir.

9 Q. Was all the bread sold? and if not, what per centage was not sold?

(Objected to.)

A. I do not think I can answer that.

10 Q. Can you answer the first branch of it? there are two branches.

A. The bread was not all sold.

11 Q. What was done with the bread not sold?

A. Given away, and thrown away.

12 Q. Why was it not all sold?

A. I suppose because there was not demand for it.

767 13 Q. About what proportion of the product of each barrel remained unsold? Give your best judgment.

A. I cannot answer that question. I do not know.

14 Q. What was done with the greater part of that which was not sold?

A. Given to the scavenger.

15 Q. Have you seen the scavenger at any one time carry off any considerable amount of it?

A. No, sir.

16 Q. What was the largest amount you have seen him carry away?

A. About 600 loaves.

17 Q. Was or was not all the bread sold while it was fresh?

A. Sometimes we would make more bread than was demanded.

18 Q. When bread was sold, state at what price could you sell it?

A. Five cents.

19 Q. How did you arrive at the average cost of the flour?

A. I took all the bills and averaged them.

20 Q. When did you stop manufacturing aerated bread?

A. I do not remember the date.

768 21 Q. Why did you select the 18th of August as the time?

A. That is the time our books were closed.

22 Q. What was the price of the flour which you manufactured during the last month that you run?

A. It averaged about $12—$12 to $12 50.

23 Q. Why did you not obtain the price of the manufacture before the 5th of March?

A. The books were all hid away, and the papers got all mixed up.

24 Q. Were you familiar during all that time with the details of the manufacture?

A. Yes, sir.

25 Q. How, in your judgment, did the expense of manufacturing and the amount realized per barrel prior to the 5th of March, 1866, compare with the expense of manufacturing and the amount realized from the product since that time?

A. Well, I should think from the time that we commenced running one gang of hands on State street that the expense would be about the same, and the product about the same; previous to that time the expense would be more.

769 26 Q. From your knowledge of the business, and your investigations into the details, are you able to state whether or not the business was profitable, from the 20th of April, 1865, to the 5th of March, 1866?

A. I always thought we were losing money.

27 Q. How did the per diem consumption of goods, when in the State street bakery, compare with the per diem consumption since the 5th of March?

A. That extends over too much time. From the time we commenced running with one gang of hands the expense was about the same.

28 Q. In the estimate you have made as to the amount of coal consumed, do you or not include the entire amount consumed in the bakery, or only that which was consumed in the manufacture of aerated bread?

A. Only that which was consumed in the manufacture of aerated bread.

29 Q. During what portion of the 24 hours was the manufacture of aerated bread conducted after the 5th of March last?

A. During the night time.

30 Q. Was or was not the engine used for any other pur-

770 pose except that manufacture during the night time?

A. Never.

31 Q. Did you heat your oven with the fuel employed in running the engine, or did you employ other fuel?

A. Employed other fuel.

32 Q. What kind of fuel did you employ in heating your oven?

A. Sometimes hard coal, and sometimes coke.

By Mr. Goudy:

33 Q. Where did you obtain the information from which you made your statement as to the cost from the 5th of March last?

A. From the books.

34 Q. Whose books?

A. Kendall Brothers, and O. Kendall's.

35 Q. What books were they?

A. Books such as merchants generally keep.

36 Q. What books do they generally keep?

A. I do not think I could answer that question.

37 Q. Do you know the names of the books that you examined?

A. I do.

38 Q. What are they?

A. One book is the receiving book.

39 Q. What are the others?

771 A. That is the only one I examined.

40 Q. Did the parties you have named keep a journal or ledger?

A. Yes, sir.

41 Q. What is the receiving book describe what its object is and how it is used?

A. It is the book in which we keep an account of everything that comes into the building for manufacturing purposes.

42 Q. Do you keep any account in that book of the sales?

A. No, sir.

43 Q. Or the receipts of money?

A. No, sir.

44 Q. Or the payments of money?

A. No, sir; we did not in that book but in the amount of money paid out we took from the time book.

45 Q. Who kept the books that you have named, the receiving book and the time book?

A. The time book was kept by my brother; I believe the receiving book was kept by Mr. Shanly.

46 Q. Where is Mr. Shanly?

A. He is in the office.

47 Q. Do you know certainly who kept the time book?

772 A. I could not state without looking at it. I could tell by the writing.

48 Q. Do you know whether or not these books are accurately kept?

A. I think they are.

49 Q. Why do you think?

A. Well, because the book-keeper worked for us before.

50 Q. Have you any personal knowledge, or information of the facts testified to to-day except what the books themselves state.

A. Well, yes; I have.

51 Q. What is it?

A. I could be more certain by what was taken from the books than I could by my own personal knowledge.

52 Q. What personal knowledge have you?

A. Of what?

53 Q. In regard to what you testified to.

A. I do not know how I could answer that.

54 Q. Do you know how many hands were employed since the 5th of last March in baking aerated bread?

A. I have been in there a great many times and saw them at work.

55 Q. Can you state how many hands were employed about that business?

773 A. Part of the time there was three men and two boys besides the engineer, but lately there has been only two men and two boys and the engineer.

56 Q. Do you mean to say that you have had two and three men besides an engineer?

A. Yes, sir.

57 Q. Who were the men?

A. There was Phil Dunn, he has been there all the time; John Matell, and another I do not remember his name. There was Johnny Dunn. I do not remember the names of the boys; there was fifty there, I suppose; but there is always that many.

58 Q. Did you know what wages he paid to these men?

A. Yes, sir.

59 Q. How much?

A. Phil Dunn received $20 a week, and the others received $14 a piece, and one of the boys $6, and the other on $5 part of the time; most of the time the boys got $5 a week.

60 Q. What does your engineer get?

A. $15.

61 Q. What was the business of the engineer?

A. Running the engine.

62 Q. Have you any information in regard to the quantity
774 of vitriol that was purchased since the 5th of March last, except what you obtained from the books?

A. I think not.

63 Q. Have you any information in regard to the amount of dust purchased since that time?

A. I have not. I have information of 25 cart loads of it. I have bought some marble dust.

64 Q. How did you arrive at the statement that a half ton of coal per day was used to run the engine for the purpose of making aerated bread?

A. I asked the engineer and looked on the books, too.

65 Q. Where is the engineer now?
A. I could not say.
66 Q. What is his name?
A. Dudley P. Stansby.
67 Q. What did he tell you?
A. He told me it burned half a ton of coal a day.
68 Q. To run what?
A. The engine.
69 Q. What did the books tell you about the quantity of coal burned per day?
A. The books told the quantity of coal that was burned during the 24 hours.
70 Q. How is that information kept on the books?
775 A. By the receipts of coal that come in.
71 Q. Did you receive coal every 24 hours?
A. No, sir.
72 Q. How did you ascertain then what there was every 24 hours from the books?
A. I can ascertain by baking for a week. We have a coal pit that will hold about 12 tons of coal.
73 Q. Then all the information you can get from the books is the quantity of coal consumed in the establishment in that specified time?
A. Yes, sir.
74 Q. Where is that coal burned?
A. Under the boiler.
75 Q. Is there none of it used in stoves?
A. We have no stoves in the shop.
76 Q. How is the building heated?
A. By steam.
77 Q. What was the quantity of coal that you ascertained from the books had been received or purchased by the establishment since the 5th of March until the 18th of August?
A. I cannot state; I do not remember.
78 Q. In what way did you arrive at the conclusion that half a ton of coal was burned every day by the books?
776 A. By averaging.
79 Q. State how you made your estimate?
A. I took the number of days and the amount of coal and estimated that two-fifths of the coal was burned for night work, and it came out very near what the engineer said.
80 Q. What reason had you for estimating it at two-fifths for night work?
A. Because they used steam for other purposes during the day.
81 Q. Why did you get 2-5 in place of 1-4, 1-2 or any other proportion?
A. I asked the steam fitter about it.
82 Q. What information did he give you?
A. I do not think I can answer any more such questions as that.
83 Q. What is the name of the gas fitter?

A. I did not say anything about gas fitter.

84 Q. What is the name of the steam fitter?

A. His name is Bob.

85 Q. Do you know from any experience of your own actual knowledge what proportion of coal was used in the establishment for the baking of aerated bread?

A. I do know what I stated here exactly from my actual knowledge.

86 Q. Do you know since the 5th of last March?

777 A. I can only judge from my knowledge of an engine how much coal it takes to run it.

87 Q. How much coal did you say that was required to heat the oven per day since the 5th of last March?

A. About half a ton.

88 Q. What price did you say the coal cost?

A. I said at an average cost of $15.

89 Q. $15 per day do you mean?

A. $15 per ton.

90 Q. Was anything else used for heating the oven besides hard coal.

A. Yes, sir.

91 Do you know how much hard coal was used and how much coke was used since the 5th of March?

A. No, sir.

92 Q. What was the price of the coke?

A. I think it cost about the same price to deliver it.

93 Q. Do you know?

A. I would not state positively; it cost over $14.

94 Q. Where is your coke obtained from?

A. From Pittsburgh.

95 Q. Was it purchased by Mr. Kendall's establishment at Pittsburg or here?

778 A. Purchased there.

96 Q. What means have you of knowing what it cost?

A. From the bills?

97 Q. How much coal did it take to heat the oven in that establishment?

A. About half a ton per day.

98 Q. Is it heated more than once in the 24 hours?

A. Yes, sir.

99 Q. How many times?

A. Four times.

100 Q. Do you know how many times it was heated for the baking of aerated bread?

A. Whenever the foreman said.

101 Q. Was it not the fact that the oven was used after the other baking was disposed of, without reheating?

A. No. sir.

102 Q. Do you know the capacity of the oven?—the size of it?

A. It is—well, I could not state positively. There is 12 plates in it.

102 Q. Why do you charge to the account of manufacturing aerated bread half a ton of coal a day, when that was the amount required for heating the oven each day.

779 A. I did not say it was that; if I did, you misunderstood me.

104 Q. How much per day did it take?

A. We usually averaged about seven tons a week.

105 Q. In what way did you arrive at the estimation that half a ton was used per day for baking aerated bread?

A. I answered that question once before.

106 Q. Will you please to answer it again?

A. The fireman told me. He told me how many wheel barrows he used on an average.

107 Q. What is the name of the fireman?

A. Phil. Dunn.

108 Q. In what way did you ascertain the number of barrels of flour in your estimate, that had been used since the 5th of March?

A. I took his account.

108 Q. Whose account?

A. Phil. Dunn's.

110 Q. Where did you get that?

A. Had it here; he told me himself.

111 Q. What do you mean by getting it here?

A. Mr. Woodbury has told me what he had sworn to.

112 Q. Did you examine any books in regard to that item?

780 A. No, sir; not in regard to that item.

113 Q. I will ask you how long these men—four men and two boys—worked every day in making aerated bread?

A. They are supposed to work all night; they get pay for it.

114 Q. How many barrels of flour can that number of men bake into bread, according to the patent in question, in this case in 10 hours?

A. I do not know.

115 Q. Do you know how many they ought to bake?

A. I do not know, sir.

116 Q. In what way did you ascertain that the number of loaves manufactured were 158,000?

A. I averaged 200 loaves per barrel

117. Do you know how many loaves a barrel in fact did produce?

A. I know the greater part of the time they produced only 170.

118 Q. At what time?

A. As long as we were using the Globe Mills flour.

119 Q. When was that?

A. I cannot state.

120 Q. What means have you of knowing how many loaves were produced a barrel since the 5th of last March?

781 A. I have counted them many a time.

121 Q. When you counted them, how did you know what a barrel produced? What number came from a barrel of flour?

A. I do not understand the question.

122 Q. What means have you of knowing that the barrel only baked the number you have counted?

A. If there is only a barrel of flour put in, I should suppose the same number would come out, if it was all drawn out.

123 Q. Did you put in the flour?

A. No, sir; but I have seen it put in.

124 Q. At the same time that you counted the loaves?

A. Yes, sir.

125 Q. And did you draw it out?

A. No, sir.

126 Q. How much flour was put in the kneader at the time?

A. It varied.

127 Q. How many barrels would the kneader hold?

A. Two and a half barrels, I believe.

128 Q. Do you know, as a matter of fact, that a barrel produced 225 or 230 loaves?

A. Yes, sir; I know some flour would.

782 129 Q. Can you state what portion of the time there was only 170?

A. I should think about two-thirds of the time, as near as I could remember.

130 Q. How much of the time did you count the loaves?

A. I do not remember the exact number of times.

131 Q. You put the loaves at 7½ cents each?

A. Yes, sir.

132 Q. And deducted from that 12 per cent. for delivery?

A. Yes, sir.

133 Q. Why did you put the loaves at 7½ cents each?

A. Because a great deal of the bread was sold at 7 cents.

134 Q. Did you sell it at 7 cents and then pay the cost of delivery?

A. Yes, sir.

135 Q. What was it worth at that time?

A. The bread was supposed to be worth 8 cents.

136 Q. It was sold at 7 to compete with Dake & Woodman?

A. Part of it was.

137 Q. Was 12 per cent. paid for delivery by Mr. Kendall?

783 A. No, sir.

138 Q. Did he pay anything for delivery?

A. All we bought on commission he did.

139 Q. Did he not deliver it himself most of the time?

A. No, sir.

140 Q. Since the 5th of March last, did he not deliver all the time?

A. No, sir.

141 Q. When did he commence delivering for himself?

A. I could not say.

142 Q. Do you know when Bremner quit delivering for Mr. Kendall?

A. Some time last year.

143 Q. Has not Mr. Kendall delivered his own bread, with a little exception, himself?

A. He has delivered some of it.

144 Q. What proportion?

A. About two-thirds. In making this estimate, we suppose it would cost something to run the wagons. These bakers seem satisfied to allow 12 per cent.

145 Q. According to the estimate you made, how much did you say the loss was from the 5th of March to the 18th of August?

784 A. A little over $900.

146 Q. Please state exactly from the figures you had?

A. $928 57 cts.

147 Q. What is a fair day's labor for three men and two boys, in a day of ten hours?

A. I could not say.

148 Q. Can you not tell how much three men and two boys ought to bake, in order to do two day's work?

A. I never saw three men and two boys working on a two-barrel machine.

149 Q. How much ought they to make on a one-barrel machine?

A. Ten barrels per day.

150 Q. Then, if three men and two boys only bake five barrels, it would only be a half day's work?

Ans. Yes, sir.

151 Q. Do you know how many barrels of flour were baked into bread, according to the ordinary method, since the 5th of March?

A. No, sir; I do not.

152 Q. Did the men who worked at night, in baking aerated bread, make or bake anything else?

785 A. Yes, sir; they did one night.

153 Q. Did they not bake but one night on anything else?

A. No, sir.

154 Q. You have spoken of the books you have examined, as belonging to O. Kendall and Kendall Brothers, who composed the firm of Kendall Brothers?

A. E. K. and J. S. Kendall and myself.

155 Q. Was Orrin Kendall part of the firm?

A. No, sir.

156 Q. When did that firm commence business?

A. The 5th of March.

157 Q. What occasion was there to examine any book of Orrin Kendall, in ascertaining the figures since the 5th of March?

C. KENDALL.

Subscribed and sworn to before me this 24th day of September, A. D. 1866.

JAMES T. ELY,
U. S. Com'r.

A. He bought a little flour since we closed our books, on the 18th of March.

158 Q. Did he keep any books to show these transactions?

A. He kept some book.

159 Q. Do you know how much Orrin Kendall baked since the 18th of August?

A. I think it was 40 barrels of flour he bought.

786 160 Q. Prior to the 5th of March, who was the proprietor there?

A. Orrin Kendall.

161 Q. Under whom did the Kendall Brothers bake this aerated bread—under Orrin Kendall?

A. Yes, sir. Orrin Kendall was supposed to own the whole concern.

Cross-examination.

By Mr. Woodbridge:

162 Q. When you spoke of burning so much coal a day, do you mean a day of 24 hours, or a day of 10 hours?

A. A day of 10 hours.

163 Q. Who conducted the manufacture from the 5th of March to the 18th of August, Orrin Kendall, or Kendall Brothers?

A. Orrin Kendall.

164 Q. Who enjoyed the profits or loss of the business during that period?

A. Orrin Kendall.

C. KENDALL.

Subscribed and sworn to before me this 24th day of Sept., 1865.

J. T. ELY,
U. S. Cnm'r.

787 *Deposition of E. K. Kendall.*

Deposition of Edward K. Kendall, taken on the 24th day of September, A. D. 1866.

Edward K. Kendall, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, makes answer as follows to the following interrogatories:

1 Q. What is your name, age, residence, and occupation?

A. My name is Edward K. Kendall; my age is 31 y'rs; my
788 residence is Chicago; my occupation is gone. I was once a baker.

2 Q. Are you a part of the firm of Kendall Brothers?

A. Yes, sir.

3 Q. What time did the Chicago firm of that name commence, and what time did it terminate?

A. It commenced March 5th, and has not been terminated as yet.

4 Q. Did that firm conduct the manufacture of aerated bread for O. Kendall, or was it conducted in their establishment on his account?

A. Conducted in their establishment on his account. I understand it was to be carried on for him.

5 Q. With a disbursement on account of the aerated bread, made through the firm of Kendall Brothers?

A. Yes, sir.

6 Q. Who was the cashier of that firm?

A. I was, sir.

7 Q. You paid all the bills of that firm?

A. I did.

8 Q. Please state the cost of material and labor employed in the same manufacture, and the amount realized from the product, as far as you can?

789 A. According to the statement that myself made out, and the statement from actual bills paid on account of aerated bread, that is part of these flour bills. There was some flour used for other purposes, and the balance of the flour was used in the manufacture of aerated bread.

9 Q. Please give those items.

A. Yes, sir. Paid out for labor from March 5th to August 18th, $1,392 18. For oil of vitriol, $438 67. For marble dust, $158 28. For soft coal, half a ton a day for 144 days, at $8 per ton, $576. For half a ton of hard coal, running the oven 144 days at an average cost of $15, $1,080. For 792 barrels of flour, average cost, $9 77, $7,737 84. The number of loaves manufactured out of that was 158,400 loaves, as near as we could calculate from the testimony of our foreman, who thought it would average that; but I think myself it did not average that, because I know they run as low as 176. I never could make it run over from 180 to 190 loaves.

10 Q. In this estimate you average 200?

790 A. Yes, sir. The last flour we used was winter-wheat flour, and it brought out more than any other flour; it made a bigger loaf. Then less the cost of delivery 12 per cent. delivery for the costs, $1,425 60. That is all the items.

11 Q. What profit or loss was realized from its manufacture?

A. $928 57 cents.

12 Q. Was that properly loss?

A. Yes, sir.

13 Q. How much of an investment was there employed in this manufacture?

A. The manufacture of this bread?

14 Q. Yes, sir.

A. By taking the value of the room at what we got for it for other purposes, it was a good deal more than we get.

15 Q. Well, state as near as you can.

A. Well, I rented those rooms for $9,000 a year. The two rooms adjoining the bakery are to be turned into stores, and the bakery basement into a publishing house. That is as near as I can judge what the thing is worth.

16 Q. What proportion of the room you have so rented would you say was occupied by the aerated bread business alone?

791 A. At the time the aerated bread was run there was no other business occupying the bakery where the machinery was, except the gas apparatus and the engine and boiler. Where the boiler and the gas machinery for manufacturing gas was occupied about 20 by 40 feet.

17 Q. What proportion of the premises which you have rented for $9,000 was, in your judgment, occupied by the aerated bread business alone?

A. What we call the bakery where it was baked, and where it was put in the oven and drawn out of the oven; that was all occupied by the aerated bread.

18 Q. What proportion of the premises in value you say was occupied by the aerated bread business?

A. Well, I should think $5,000.

19 Q. $5,000 per annum?

A. Yes, sir.

20 Q. Was the aerated bread manufacture conducted by the same workmen who previously conducted it?

A. Yes, sir.

21 Q. How long experience have you had as a baker?

A. Ever since I was born, or knew enough to know anything about the baking business.

792 22 Q. From your general knowledge of the baking business, and from your knowledge of the aerated bread manufacture as conducted in your establishment, what profit, in your judgment, can be realized for manufacturing it at that place with these facilities?

A. It depends altogether, sir, upon the quantity you manufacture. The machinery capacity was, I believe, 20 barrels of flour in 10 hours.

23 Q. Suppose only six barrels of flour was manufactured in a day in that establishment, in your judgment what amount of profit would be realized?

A. No profit at all, sir; for the reason that you have to pay your men for a day's work, and they only do one-third of a day's work.

24 Q. Supposing ten barrels should be manufactured, in your judgment what profit would be realized?

A. I do not know, I am sure. I should not think there would be enough to amount to anything; it would not be worth a man's while to go into the business.

793 25 Q. Supposing 20 barrels were manufactured at that place in 10 hours, taking into account the stock and the use of the premises and the cost of manufacture and of material, what, in your judgment, would be the amount of profit realized?

A. Well, that would be dependant upon whether there was any competitors. If there were any competitors in the business, that would depend how they would regulate the price of the bread.

26 Q. I refer to the manner in which it is conducted in this market in competition with Dake & Woodman.

A. I should not think I could make a fortune out of it at that, or that I could make anything that would pay me to stay in the business.

By Mr. Goudy:

27 Q. You have stated that the amount paid for labor since the 5th of March to the 18th of August was $1,392. Was that labor all expended in baking aerated bread?

A. Yes, sir.

794 28 Q. Did the men employed do a full day's work?

A. No, sir. We had not the work for them to do on the bread.

29 Q. During that time were you conducting other branches of the baking business?

A. Yes, sir; all branches.

30 Q. What quantity of bread were you baking according to the ordinary method?

A. We were baking more than we were of the other kind. I do not know what proportion.

31 Q. What quantity of crackers?

A. Running from 25 to 30 barrels of flour a day to crackers.

32 Q. How much business were you doing in pastry, cakes, &c.?

A. I do not know, as far as the value of the business is concerned, how much it would amount to. We had 8 men and two boys there most of the time, that is, on cakes and pastry.

33 Q. Were the men who were employed in baking aerated bread acquainted with the baking business generally—bakers by trade?

A. I believe they pretended to be, that is, the men. The

795 boys did not pretend to be bakers.

34 Q. Why did you not employ these men about other branches when they were not occupied in baking aerated bread?

A. Because the business was so arranged we could not do it.

35. Q. How did you arrive at the conclusion that that was the amount of money paid for labor?

A. I paid it weekly myself, and kept an account of it.

36 Q. How did you ascertain the amount paid for vitroil?

A. From bills that I have receipts for.

37 Q. You have stated that $576 was paid for soft coal to run the engine. In what way did you arrive at that conclusion?

A. From the testimony of my engineers, and from the judgment, as far as I could tell, from the payment of the bills.

38 Q. What was the aggregate amount paid for soft coal at that time?

A. I do not know, sir, at present; could tell by referring to the bills and books.

39 Q. What proportion of the whole amount did you estimate was used for this kind of bread?

796 A. I did not make my estimate in that way. Each watch run 10 hours, and were the engine would run the full 10

hours it would probably consume 10 hours of each watch. The aerated bread probably did not run 5 or 6 hours a night—6 or 7.

40 Q. How much coal every day did you learn had been burned altogether?

A. I did not figure it up. I based my estimate on coal from the statement of the engineer.

41 Q. What was that statement?

A. Half a ton per day.

42 Q. Do you mean a day of 10 hours?

A. Half a ton for the time that we worked on the aerated bread each night.

43 Q. Who did you get this information from?

A. From the engineer.

44 Q. Was he on duty during the whole 24 hours?

A. No, sir; there were two engineers—night and day.

45 Q. What time was he on duty?

A. At night when the aerated bread was made.

46 Q. Did you make any examination to ascertain the total amount of coal used by the engine?

A. No, sir; I did not.

47 Q. How did you arrive at the conclusion that there was
797 half a ton of hard coal used for heating the oven?

A. From the statement of the foreman and the engineer.

48 Q. Do you know the total amount of hard coal used from the time that you have stated?

A. No, sir.

49 Q. You know the amount used per week altogether in your establishment?

A. I do not, now; I can tell from figures. I have got the bills and amount on my books.

50 Q. Was anything else besides hard coal used to heat the oven?

A. Yes, sir; we used Pittsburgh coke part of the time.

51 Q. How did you ascertain that there were 792 barrels of flour used?

A. By the statement of our foreman, and, as near as I should judge, what I know was used.

52 Q. At what rate did you estimate the price of the bread per loaf?

A. Seven and a half cents.

53 Q. Was a part of it sold for 8 cts?

A. Part sold for 8 cts.; part 7 cts.

54 Q. What was a fair price for it without reference to
798 competition?

A. A fair price of the bread as we were running it; the quantity we run,—I should not want to sell it at less than 12 cents a loaf.

55 Q. What were you selling the common bread for?

A. Eight cents a loaf.

56 Q. Did not the two kinds of bread bring the same price?

A. I do not know. The aerated bread as we run it, ought to bring us more, because it cost us more.

57 Q. You are answe[r]ing with reference to the cost. I ask you what the price ought to be with reference to the interest of the consumer?

58 A. That is something that I am not able to judge about.

59 Q. Do you think the aerated bread and the bread baked according to the ordinary method are equally good for consumption use?

A. No, sir; I do not. I like the common bread the best myself.

60 Q. I do not ask you what you prefer, but how do [do] the two kinds of bread compare for common use for sale in the market?

799 A. The way I should judge from that is from the amount we sold. We sold more common bread than aerated bread.

61 Q. What did you sell this bread for—for 7 cents a loaf?

A. I sold it to persons to sell again.

62 Q. What was the reason that you took 7 cents a loaf?

A. Because the customers could buy it for seven cents, and of course we had to compete with them.

63 Q. Did you pay the cost of delivery in addition to that?

A. Yes, sir.

64 Q. Do you mean to say that you paid the cash and delivered it yourself?

A. We delivered it ourselves and paid our man.

65 Q. And estimated that at 12 per cent.?

A. Yes, sir.

66 Q. Why did you continue to bake this bread when you were losing money on it every day?

A. We were in hopes of getting a monopoly of the bread. He wanted us to continue baking it until the title was fixed.

67 Q. At what place did you carry on the business of baking?

800 A. We carried on the business of baking on the corner of Washington and Dearborn streets, Chicago.

68 Q. What portion of the building did you use for the baking?

A. We used all the basement, all the first floor, and two back rooms, and the two next floors—the second and third floors.

69 Q. Is that the space that you say you have rented for $9,000?

A. The place we rented for $9,000 includes the basement and the back room, and the second and third floor back rooms; it does not include the sale room.

70 Q. Have you rented that space in one contract, or to different persons?

A. Two contracts.

71 Q. What are the different apartments?

A. The whole basement and one store fronting on Dearborn street, and the second floor back room, and the third floor back room.

72 Q. How much do you rent the sale room for?

A. We have not rented that as yet.

73 Q. Do you mean to say that you have rented the rear room on the first floor for the price you have named?

801 A. No, sir. The stores there are to be fronts put in. The basement is to be left as it is, with the exception that the

ovens are to be taken out and the two back rooms to remain as they are.

74 Q. What [illegible] of these were used for the manufacture of aerated bread?

A. The first [illegible]ack, and about 20 by 40 feet in the basement.

75 Q. Did y[illegible]use the bakery on the first floor for manufacturing other artic[illegible]your business?

A. Not at th[illegible]e the aerated bread was being manufactured—not at night.

76 Q. Did y[illegible]ot bake all your crackers in that room?

A. Yes, sir [illegible]ring the day.

77 Q. Did y[illegible] not bake other articles besides aerated bread at night?

A. We did for a few nights make some ginger nuts, that was the only thing we manufactured.

78 Q. For the purpose of a bakery what was the space in the basement 20 by 40 feet and the rear room on the first floor used during the night time worth?

A. I do not know what it would be worth; we could not rent it for that purpose.

79 Q. What was this space in the basement 20 by 40 feet occupied by?

802 A. The engine, the boiler, the gas apparatus, and the reel oven.

80 Q. Is it not the fact that you used the room on the first floor, the engine and the oven, for your other branches of business all the time, except during the nighttime?

A. Yes, sir.

81 Q. Then the only space in your establishment occupied by aerated bread was your back room, the oven and engine, which were used while the aerated bread was being made?

A. Yes, sir. The second floor room was used as a flour room, where they stored all the flour for the aerated bread, and the sifting machinery was up there.

82 Q. Can you state what the total space occupied by you for a bakery would be in the way of rent?

A. The only way you can base the value of that is by what we can get for it. Take and put the bakery in another portion of the city where the property is not so valuable, it would not be worth so much.

83 Q. Do you not rent a portion of this establishment for a bakery at the present time?

A. Yes, sir.

803 84 Q. What part of it?

A. The same as has been occupied by us.

85 Q. What rent do you get?

A. At the rate of $6000 a year at present.

86 Q. What proportion of your business since the 5th of March last, was baking aerated bread?

A. A very small portion.

87 Q. Can you state about the proportion?
A. No; I could not without figuring.
88 Q. Was it 20 per cent?
A. No, sir.
89 Q. Was it 10 per cent?
A. I could not fix any figures at all.
90 Q. You think it was less than 20 per cent?
A. It was less than 20 per cent.
91 Q. Are you one of the person who has signed the bonds in this case?
A. Yes, sir.
92 Q. Were you in the establishment of your father (Mr. Orrin Kendall) before the 5th of March last?
A. Yes, sir.
93 Q. Who was conducting the business at that time?
A. My father.

By Mr. Woodbridge:

94 Q. How would the cost of manufacturing aerated bread
804 in that establishment, assuming that 20 barrels of flour were made into bread in 10 hours, compared with the cost of manufacturing 20 barrels of flour into bread in the ordinary way?
A. I never made any figures to know what the difference would be.
95 Q. Which in your judgment would cost the most?
A. I should think that the old way of manufacturing would cost the most.
96 Q. Supposing ten barrels were manufactured into aerated bread how would it compare with the cost of manufacturing a similar amount of bread in the old way?
A. I should not think there would be much difference. It is half a days work for men to put it into the machine.
97 Q. Supposing twenty barrels were manufactured in two watches with a one-barrel machine how would the cost of that manufacture compare with a similar amount into bread in the old way?
A. In that state it would cost considerable more. It would take just double the quantity of coal, and double the quantity of men.

805 *Cross-examination.*

By Mr. Goudy:

98 Q. Do you know what the proprietor paid for the first kneader that he bought to manufacture aerated bread? do you know what the value was?
A. No, sir.
99 Q. Do you know what the machinery that you have used lately cost?
A. Its original cost—I do not know as I could state what it did originally cost.
100 Q. Can you not tell about the amount?

A. I should think at the least $1,500, taking gas alterations and all the machinery complete as it is now.

101 Q. That was the cost of your establishment as it is here?

A. The cost of my father's.

Direct examination resumed.

102 Q. Before the firm of Kendall Brothers was formed did you know anything about the details of the manufacture?

A. No, sir.

EDWARD K. KENDALL.

Subscribed and sworn before this 24th day of September, A. D. 1866.

JAMES T. ELY, *U. S. Com'r.*

806 *Deposition of Orrin Kendall*

Deposition of Orrin Kendall, taken on the fifth day of October, A. D. 1866.

Orrin Kendall being first duly sworn to testify the truth, the whole truth, and nothing but the truth, makes answer as follows to the following interrogatories:

807 1 Q. Are you the defendant in this suit?

A. My name is Orrin Kendall. I am, sir.

2 Q. Have you examined your books and papers, to ascertain the cost of materials and labor employed in the manufacture of aerated bread, since the 20th of April, 1865, up to the 5th of March, 1866?

A. Yes, sir. I have examined my bills, and the papers and time-books of the workmen, but I have not gone through the whole in detail.

3 Q. Have you ascertained as to the cost of flour?

A. Yes, sir. I bought all the flour was ever used in the bakery.

4 Q. State what price you paid per barrel for flour between the 20th of April, 1865, and the 5th of March, 1866. I mean the flour you used in the manufacture of aerated bread.

A. The flour used averages from $9 up to $12.

5 Q. How much did the other flour known as the Snowball, cost you per barrel?

A. My impression is it averaged about $10 50.

6 Q. Are there any bills since that date?

A. Yes. I left them on my desk. I used the Snowball
808 and Moss Rose almost altogether, and I used some of the brand of the Globe Mills. Where I designate the brands on a particular bill, I refer to all the items in the bill.

7 Q. When did you move your aerated bread business into the State street bakery?

A. I am afraid I cannot give you the exact date for that.

8 Q. Well, give about the date.

A. It must have been—I cannot tell now, but I think it was

in the spring months, March or April. Well, now, I think it was about June, 1865.

9 Q. How long did you run two gangs of men up there, on aerated bread?

A. I do not recollect.

10 Q. Do you know how much you paid for carbonic acid gas during that period, from the 20th of April, 1865, up to the 5th of March, 1866. State how much profit you made on that business during that period?

A. Well, sir, I cannot state, but to the best of my judgment, it was a losing thing right along. I had so many disadvantages to work against, or they worked against me rather, that I could not tell.

11 Q. Are you a practical book-keeper and accountant?

809 A. No, sir.

12 Q. Did you have a book-keeper during that period?

A. I did.

13 Q. Have you ever been able to understand his accounts definitely?

A. No, sir.

14 Q. Have you had them investigated?

A. Yes, sir.

15 Q. Could you find out from investigation anything about them?

A. He was a very inaccurate and very unreliable book-keeper, so far as keeping a straight set of books.

16 Q. Can you state, from your knowledge of your business transactions from the 20th of April, 1865, up to the close of your business, whether or not the same was a making or a losing business?

A. From the time that Mr. Bremner went over to Dake & Woodman, from that time I have lost money on aerated bread, because they transferred my whole trade; I mean so far as Bremner's waggon's were concerned.

17 Q. How did your profits on common bread compare with your profits on aerated bread?

A. On the aerated bread I lost money; on the common bread I made money.

810 18 Q. During that period?

A. Yes, sir. On the common bread I made money, and on the aerated bread I lost money.

19 Q. How did the profits on the aerated bread, from the 20th of April, 1865, up to the time you closed your business, compare with the profits you made on the other branches of your business?

A. Other branches paid me a profit, and the aerated bread paid me a loss.

Cross-examination.

By Mr. Goudy:

20 Q. What means have you of knowing that you lost money in baking aerated bread from the 20th of April, 1865, to the 5th of March, 1866?

A. From the simple fact of the enormous outlay it cost to carry it on.

21 Q. What was the outlay in carrying it on?

A. The outlay was in the expense of the machinery, the flour, the help, the ingredients, &c.

22 Q. What did you sell the bread for?

A. I sold it at retail in the store from 8 to 10 cents a loaf; at wholesale from 7 to 8 cents.

23 Q. If you lost money while carrying on that business, why did you continue the making of aerated bread?

811 A. I continued to make the bread for several reasons. One reason that I continued it, it was important to keep up a variety of stuff to supply my customers; that is one reason. Another reason is, that I expected to succeed in retaining my equitable rights in the right to manufacture the bread.

24 Q. At what time did you buy the two-barrel kneader?

A. I could not state the date. I think it was some time in November or December last.

25 Q. What was the cost of the first kneader and fixtures that you bought?

A. Well, that I could not state.

26 Q. Do you remember about the amount?

A. My impression is that the aerated bread machinery cost me about $2,000.

27 Q. Are you able to tell, from the books kept during that time, the costs and the receipts in regard to the manufacture of the aerated bread?

A. No, sir; I could not go in accurately and tell the daily cost of the manufacture of aerated bread.

28 Q. Were the books kept so that anybody could tell?

A. Yes, sir; the books are kept so that we can tell, from the number of men that we keep on the aerated bread, and the esti-

812 mated amount of coal and material used, how much it cost from a certain period. From the 4th or 5th of March, up to the 18th of August, we have made a pretty careful investigation, and another investigation which we handed to Mr. Woodbridge, which he has lost, and we have not had time to go on with the investigation.

29 Q. You made money from the 20th of April down to the time Mr. Bremner left you?

A. Yes, sir. When I was baking from 20 to 22 barrels of flour per day, I made money on it.

Direct examination resumed.

30 Q. Did you make more money from the 20th of April, 1865, up to the first of July, 1865, than you have since lost in the manufacture, or did you make less?

A. Well, I thought I made less money. I worked under great disadvantages in the old bakery.

31 Q. Annex to your deposition a detailed statement of the cost of materials and labor used by you in the manufacture of aerated bread,

from the 20th of April, 1865, up to the 5th of March, 1866; likewise annex a statement of your receipts from the product of said manufacture.

(Exhibit is hereto annexed and marked "Exhibit I.")

813 *Re-cross-examination.*

By W. C. Goudy, esq.:

32 Q. You have placed the average price in the estimate furnished by you, of flour, at eight fifty-two, nine twenty-three, ten seventy-five, in dollars and cents, per barrel. State how you arrived at those figures.

A. I took the various bills paid during that time, for the flour we made into aerated bread.

33 Q. What bills did you have, showing that any particular lot of flour was made into aerated bread?

A. I had, at the time, quite a large number of bills given from Underhill & Co.

34 Q. Are these the same bills furnished by you in your estimate?

A. They are.

35 Q. Have you any further means of knowing now, than you had before, what particular barrels of flour were used in making aerated bread?

A. I know the barrels of flour I used.

36 Q. Did you use all of these particular brands in making aerated bread, or did you use some of the same brands for other business?

814 A. I used those brands I have specified in making into aerated bread. I might have used some of those brands in the other work. I think I did.

37 Q. You have stated in the estimate furnished by you, that the oil of vitriol and marble dust cost two and a half cents per barrel of flour. State how you arrived at these figures?

A. I took the various bills for marble dust and oil of vitriol, during the time.

38 Q. Did you use all those articles purchased during that time before the fifth of March, last?

A. I used all there were in the estimate. I don't recollect that there were any on hand.

39 Q. How do you know that you used all you put in that estimate?

A. Because we took account of stock at that time, and knew just what I had used up.

40 Q. In taking an account of stock you would know what you had on hand?

A. Yes, sir.

41 Q. How much did you have on hand?

A. I can't say without referring to my inventory.

42 Q. Did you ascertain in making this estimate, how much you had on hand?

A. No, sir; I don't think I did.

43 Q. How then do you know what you did use, before the fifth of March, last?

815 A. I must have known in making the estimate, the invoice; because I knew what was on hand; it was in the invoice, what was on hand; by taking out the amount we had on hand, it would leave what was consumed during the time specified.

44 Q. When was this estimate made?

A. We have been making it up a good deal of late. I couldn't give the date. They had been at it for several weeks.

45 Q. Who made it?

A. I made it with my son Edward, and my present book-keeper, Mr. Shanly.

46 Q. Has it all been made within two or three weeks?

A. I think we made it, and handed it to Mr. Woodbridge before that time.

47 Q. How long ago before?

A. It might have been some several weeks. I couldn't state the exact date.

48 Q. Can you state from recollection whether you ascertained how much of vitriol and marble dust you had on hand on the fifth of March last?

A. It was on the invoice. I knew all the time, but couldn't state how much there was, now, on hand.

816 49 Q. Did you look at the invoice yourself or did somebody else look at it?

A. I did look at it, and my book-keeper and my son.

50 Q. Have you that invoice in your possession?

A. I have.

51 Q. Will you furnish it as a part of your deposition to the commissioner, to be attached to the same?

A. The invoice of the stocks of various kinds, or simply of the oil of vitriol?

52 Q. The invoice that shows these items; the oil of vitriol and marble dust?

A. Yes, sir; if required.

(The invoice furnished in answer to above, is hereto annexed and marked exhibit 2.)

53 Q. You have stated in the estimate furnished that you used one ton of hard coal per day down to the twelfth of December, 1865; and also one ton of soft coal per day down to the same period; explain how you ascertained that average of one ton of coal used per day, of each of these kinds. (See end of deposition.)

A. Well, sir, we made up our monthly bills and accounted for coal, and those bills were collected payable monthly, and we

817 then made an estimate from these bills so much per day.

54 Q. What is the aggregate amount of coal that you used during that time in your establishment?

A. That I couldn't state without referring to the bills.

55 Q. Will you look at your bills and furnish an answer to the com missioner?

A. Yes, sir.

(The answer furnished in response to the above is hereto annexed, in connection to this deposition, at end hereof.)

56 Q. What proportion of the whole amount of coal used by you do you consider as used in the baking of aerated bread?

A. To both hard and soft I suppose that applies?

57 Q. Yes.

A. I don't recollect the proportion that we used. We generally estimated by so much per gang of men. We usually rated it at the same for each gang of men running night and day, with two gangs of men.

58 Q. How much did you estimate for one gang of men?

A. We estimated about half a ton to each gang, if I recollect right.

818 59 Q. How long does each gang work?

A. Ten hours; that is the rule; sometimes they work short, as in making aerated bread particularly.

60 Q. What was the hard coal named in your estimate used for?

*A. It was used for heating the large reel oven.

61 Q. What was the soft coal used for?

A. For running the engine.

62 Q. When did you commence running your reel oven?

A. Soon after it was finished; the date I can't give.

63 Q. About what time?

A. I don't recollect.

64 Q. Did you have a reel oven on State st ?

A. We did not.

65 Q. Did it take as much coal to heat the oven you used there as the reel oven?

A. We had six ovens there, and I think it took fully as much coal to heat those ovens.

66 Q. How many ovens did you use to bake aerated bread on State st. ?

A. Two usually, sometimes three.

67 Q. What proportion of coal would it take then to heat two or three ovens?

A. We never used less than half a ton of coal of either kind, night or day.

819 68 Q. How do you know that?

A. By my bills; that is my impression, that we couldn't have used less than that, and sometimes used a great deal more on the engine. The boiler was out of order, and we had to use coal very freely night and day, as it consumed a good deal of coal. We put in a new boiler, but that leaked also, and so they both consumed about the same amount of coal.

69 Q. Were you conducting other branches of the baking business besides the baking of aerated bread at the same time?

A. Yes, sir; we worked a day gang on crackers.

70 Q. Anything else?

A. I think not. At the time we run that State st. bakery, the last time—Oh! excuse me a moment? No, sir. I think we worked nothing but crackers there.

71 Q. After you moved into Dearborn st., what did you bake there besides aerated bread?

A. We baked in the reel oven; crackers in the day time, and aerated bread at night.

72 Q. Did you manufacture bread according to the ordinary method?

A. I did.

73 Q. Where did you bake that?

A. In the basement, in other ovens.

820 74 Q. What kind of ovens did you bake that in?

A. They were called under-heaters or flue-ovens furnace-ovens.

75 Q. How did you heat those ovens?

A. Usually with coke, almost exclusively with coke.

76 Q. Did you heat the reel ovens with coke sometimes?

A. We did not with that kind of coke. I was using the Gas Co.'s coke with that oven, but I recollect that we did use some of the other kind of coke, but I couldn't say whether it was before I sold out to my sons or not. I don't think we did; I think we used hard coal.

77 Q. Did you use the steam power for baking crackers and other kinds of bread?

A. We used the steam power for baking crackers in the day time, and used no steam power for baking soft bread at night.

78 Q. Did you run an elevator by your steam power?

A. We did not; not during the night while we were baking aerated bread.

79 Q. Was the hard coal you purchased in one lot and used
821 for heating such ovens as you had whatever they might be used for?

A. Yes, sir; I had specific places assigned to each kind of coal, and used out of those for the ovens which I have already stated.

80 Q. Explain what you mean by having specific places for certain kinds of coal.

A. I mean that we had three different localities where we dumped or deposited the coal.

81 Q. In examining the bills to make this statement, did you take the entire amount of coal, or take what coal you put into those three different places separately?

A. In making up of the different estimates I took them separately; that is, the hard coal bills distinctly, the soft coal bills distinctly, and the coke—I didn't make any estimate of the coke, however.

82 Q. You spoke of three places. You put the hard coal into one place; the soft coal into one place, and the coke into one place?

A. Yes, sir.

83 Q. What other purpose, besides heating ovens to bake aerated bread, did you use hard coal for in your estimate?

A. Nothing. Please read the question again.

(The reporter repeated question No. 83.)

A. I used it for running crackers during the day in the reel oven.

822 84 Q. Didn't you use the hard coal for heating the oven to bake crackers on State st.?

A. I did.

85 Q. And you used the hard coal to heat the ovens on Dearborn st.?

A. I used the hard coal on State st. for baking of crackers in the daytime, and the hard coal for baking aerated bread in the night. I used hard coal in the reel oven for baking aerated bread at night and for baking crackers in the day-time.

86 Q. I observe in the statement furnished by you that you have estimated a half ton per day of hard coal for heating an oven when only baking five barrels of flour per day, and you have stated, as I understand you, that a half a ton would heat for ten hours. How do you reconcile this discrepancy?

A. I don't know as I have stated that the hard coal would run the oven for ten hours only on the average. The way of heating the reel oven was: we began to fire up some two or three times during a watch—perhaps twice, to start it. Sometimes we run it a little later and sometimes a little shorter time, and on the average it
823 would average about half a ton per watch for the ten hours.

87 Q. When you had finished baking crackers in the reel oven, wasn't it hot enough to proceed with baking the aerated bread without being reheated?

A. It is as good for one as for the other; the oven does not cool down at all; it is kept hot for the entire twenty-four hours. Both gangs have to fire up; one for the other—that is, the gang that leaves, leaves the oven in good trim, as we call it, for the other gang following, and vice versa.

88 Q. As matter of fact, didn't you proceed to bake aerated bread after finishing cracker baking without reheating the oven?

A. As I remarked, we left the oven in good trim for the gang following; the aerated bread might, for all I know, have been put in without firing up immediately, and so vice versa; the cracker hands may have put in crackers without firing up immediately.

89 Q. Is there any difficulty in baking five barrels of flour into aerated bread after you have finished baking crackers without firing up again?

A. Yes, sir. It depends on the style of heating the oven
824 and the kind of stuff we bake; some kinds of crackers require a cooler oven, Boston crackers particularly.

90 Q. Do you mean to say it would take half a ton of coal per day for heating the oven for baking five barrels of flour?

A. I mean to say that amount was consumed on an average for baking what bread we baked during that time; but I don't mean to say that if bread could be crowded as fast as the machine could work it, it would consume half a ton of coal in baking five barrels of flour.

91 Q. What proportion of your business was the baking of aerated bread from the twentieth of April to the first of July, 1865?

A. Well, sir, as I stated by my former statement, so many barrels per day during that time; from twenty to twenty-two; I think that is the statement I made. We were running the crackers in the daytime, so near as my memory serves me, about twenty to thirty barrels per day of flour. Then we were running, in addition to that, cakes and soft bread, which was another, quite an item in the business; but as to the exact proportion of the aggregate amount of business done I can't state.

92 Q. How many barrels of flour did you bake into soft
825 bread and cakes per day during that period of time?

A. I couldn't state now, sir, from memory.

93 Q. State as near as you can.

A. There was a time that we run down our soft bread to rather a small amount. At the time we were baking the largest amount of aerated bread, we were then baking the smallest amount of soft bread, but the exact amount I couldn't give.

94 Q. Was it as much as fifteen barrels of flour per day for those purposes, cake and soft bread?

A. No, sir; I think not.

95 Q. Ten?

A. I hardly think it would average that.

96 Q. How many barrels of flour per day did you bake into crackers from the first of July to the first of October?

A. 1866.

97 Q. 1865?

A. Well, sir, I couldn't give you the number of barrels precisely; about the same rate I have already stated; perhaps it might average more.

98 Q. You baked as many as thirty barrels?

A. I think it would average that.

99 Q. How many barrels per day during that period of time
826 did you bake into cakes and soft bread in the ordinary way?

A. I couldn't give you the accurate number.

100 Q. Did you increase the quantity of soft bread during that period from what it was during the first?

A. Yes, I did.

101 Q. Would it average fifteen barrels at that time per day?

A. I think not.

102. Q. Would it average twelve?

A. It might average twelve.

103 Q. How many barrels of flour did you bake into crackers from the first of October to the twelfth of December, 1865?

A. I don't think it would vary much from what I baked during the last periods mentioned.

104 Q. How many into cakes and soft bread?

A. It might have averaged perhaps ten or twelve barrels.

105 Q. From the twenty-sixth of December, 1865, to the fifth of March, 1866, how many barrels of flour did you bake into crackers?

A. I was going to add to my last answer, but it might have gone a little over that. In answer to your last question, I'll say
827 that I am not aware that I varied much in running crackers. I run my gangs straight along, about an even thing.

106 Q. How many barrels of flour during that period were made into cakes and bread in the ordinary way?

A. I think about the same I have just stated.

107 Q. Didn't you increase it largely after you decreased the baking of aerated bread?

A. It increased, but not very largely.

108 Q. During that period of time, you have fixed the aerated bread at five barrels per day. How much do you think you baked into bread, in the ordinary way, when you were baking only about five barrels of aerated bread?

A. We were baking on an average probably about ten barrels.

109. Q. Didn't you increase the amount of crackers baked in the winter from what you had before?

A. I think I only worked one gang. I don't recollect of working but one gang at all. I will however state that we worked some extra workover time, on the day work—cracker work—during the fall and spring, as we usually do in a rush of business.

110. Q. Between the 20th of April and the first of July, 1865, how much did each loaf weigh in the dough before it was baked into aerated bread?

828 A. About twenty-six ounces. We calculated it would weigh about a pound and a half, so far as my memory served me, after it was baked.

111 Q. How much water was put into a barrel of flour for aerated bread?

A. I don't recollect.

112 Q. Wasn't it about a hundred and forty pounds?

A. I had so little to do with the ingredients about putting them in, that I couldn't state exactly the number of pounds used.

113 Q. Did you follow, at that time, the directions in regard to the quantity of water, given you by Mr. Pendleton?

A. We didn't follow his directions accurately at any time after thoroughly testing his plan.

114 Q. Did you increase or decrease the weight of the loaf subsequent to that time?

A. We increased or decreased as flour varied in price, falling or advancing.

115 Q. When you paid ten dollars and seventy-five cents, what was the weight of the loaf?

A. I think we called it about twenty-two ounces, having it weigh about a pound and a quarter after it was baked; that is my impression. Couldn't say positively.

116 Q. Why do you place in your statement the number of loaves per barrel at two hundred?

829 A. Well, sir, we counted them. I counted them, and had a man count them frequently, putting in a single barrel of flour, and

counting the bread after it was baked, or when it was going into the oven, as the case might be, when drawn through the kneader.

117 Q. When you counted them yourself, how did you find the average?

A. Sometimes they would go as high as two hundred and twelve, and sometimes they would fall off; that is, when we were making the best bread. At the time when "Yankee" was with me, it run up as high as two hundred and twelve, but more frequently it would fall short. It would average about two hundred to a barrel.

118 Q. Don't you know that you baked as high as two hundred and twenty?

A. Per barrel?

119 Q. Per barrel.

A. No, sir; I don't.

120 Q. In the estimate, you have placed the price at seven and a half cents per loaf. How did you arrive at that conclusion?

A. I gave direction at what price to sell the bread. As I stated, we sold at retail from eight to ten cents, and at wholesale from
830 seven to eight cents, and the estimate was made on the average.

121 Q. From the twentieth of April to the first of July, 1865, at what price did you sell the bread at wholesale?

A. I think our wholesale price, as a general thing, was about eight cents. Eight cents was the rule.

122 Q. Did you sell any less than eight cents before Woodman and Dake commenced baking?

A. I think not.

123 Q. From the first of July to the first of October, 1865, did you sell any less than eight cents?

A. I did. After Dake & Co. had commenced, in order to compete with them.

124 Q. What did you sell bread at when you sold for less than eight cents?

A. As low as seven.

125 Q. Did you put down your wholesale price to seven cents, or did you sell a part for seven and a part for eight?

A. Where we delivered it to certain parties, we sold it for eight; but when customers came after it, we put it at seven to wholesale dealers. Perhaps to Mr. Dunk and one or two others. I put them in delivering it to them at times at the seven cent price.

126 Q. When the wholesale purchasers came after it, and you
831 sold it to them at seven cents, you were at no expense for delivering it, were you?

A. No, sir, except for clerk hire, and counting it out to them.

127 Q. Does the twelve per cent. for delivering, put in the estimate, include any clerk hire and the counting, or does it include simply the expense of wagons, horses, and hands, for delivering to customers?

A. It covers all the expenses for delivering, and we estimated it would cover all the expense.

128 Q. When you hired, the bread delivered, didn't you pay twelve per cent. to the men that run the teams?

A. Yes, sir.

129 Q. After the first of October, 1865, did you sell any less than eight cents at wholesale prices?

A. I think we sold some, during that time, as low as seven cents.

130 Q. You sold for seven, as you stated before, when customers called for it?

A. I sold to customers or wholesale dealers some for seven cents when they called for it, and some to Dunk and heavy customers at the same price, in order to compete with Dake & Woodman; for they were running after me mighty hard, to get every customer I had.

832 131 Q. When you delivered to Dunk and others, (as mentioned by you in the last answer,) did you pay anything for delivery?

A. Yes, sir.

132 Q. Did you deliver it yourself or hire it delivered?

A. Sometimes one way and sometimes the other, but usually with my own teams and men. In case of emergency I would hire an express wagon.

133 Q. How much did you ever deliver at seven cents to a customer at his place of business?

A. I couldn't state without referring to my books.

134 Q. Was it not a very small quantity?

A. No, sir.

135 Q. Will you look at your books, and furnish to the commissioner an answer to the last question?

A. I don't know that I could furnish how much was delivered to them at seven cents.

136 Q. What was the fair market price for the bread at wholesale? Was it less than eight cents?

A. The fair market price, sir, would be about eight cents.

137 Q. At what price per loaf did you sell bread baked in the ordinary way?

A. The same price, wholesale.

138 Q. You mean eight cents?

833 A. Eight cents, except a smaller sized loaf that we made and sold at six.

139 Q. You have stated that twenty-six hundred and ninety-two barrels of flour were baked into bread in the ordinary way would have realized to you a profit of one dollar and seventy cents per barrel. Explain in what way you arrived at that conclusion.

A. In the ordinary way of estimating the profits and losses on bread; I don't know as that is any more specific than I can give it.

140 Q. Did you make an estimate on the flour you baked into bread, in that way, during the same time you were baking the aerated bread?

A. Yes, sir; I made my estimate on my bread, usually monthly, as the prices changed, or weekly as the price of flour changes.

Re-direct examination.

By Mr. Woodbridge:

141 Q. Was the total product of the aerated bread manufacture, sold in this market, or was there any loss, by wastage or otherwise?

A. There was loss by wastage and otherwise. It was all sold in this market, but not all consumed in this market. Some small lots were shipped out into different places.

142 Q. About what percentage of bread was lost by wastage or laying over, and becoming stale?

834 A. I couldn't give an accurate percentage, but my impression is, that it couldn't fall short of five per cent.; and my impression is that it would exceed that, if accurately estimated.

143 Q. Would that cover the loss on bread that was sold after it became stale?

A. No, sir.

144 Q. What proportion of the bread remained over, until it became stale, and was sold in that condition?

A. We lost a great deal of bread at the State st. bakery, that became stale and was imperfect—poor bread—and sold it for hog-feed, to the farmers to feed out as they wished to.

145 Q. When bread layed over, until the second day, was it saleable in this market?

A. Not very; it was not saleable.

146 Q. If you sold it on the second day, at what price, per loaf, did you sell it?

A. Our customers objected to taking bread that was not perfectly fresh. Usually we sold it at about five cents a loaf, when it became stale; that is, if it was saleable at all?

147 Q. Why can you not avoid any loss from bread lying over, and becoming stale?

A. Customers vary in their demands. We cannot guage our supply to the demand accurately.

835 *Re-cross-examin. resumed.*

By W. C. Goudy, Esq'r:

148 Q. Did you have stale bread left ove., and sell it to feed the hogs, subsequently to the twentieth of April, 1865?

A. There was some batches; yes, sir. When we first commenced, there was a great deal of stale bread and waste.

149 Q. After the twentieth of April, 1865, after Dake begun, did you have any to feed to hogs?

A. Yes, sir; a great deal. We lost a great deal of bread in the State st. bakery. It was piled up on the floor there.

150 Q. After the twentieth of April?

A. Yes, sir.

By Mr. Woodbridge:

151 Q. What was the cause of the wastage of bread at the State st. bakery? In what condition was that bakery?

A. The bakery was in a bad condition; and on several occasions, on some occasions, my men have been intoxicated and made poor bread. They were furnished liquor by, I am credibly informed, by some men sent up there by Mr. Dake, to get them intoxicated.

836 152 Q. I guess you had better take that back.

A. That is the fact.

153 Q. If you want to put it in, I will go on.

A. I can prove it by the very man that did the thing. Yes sir! The engineer that worked for me, and afterwards worked for Dake, told me that Dake sent his men up and got my engineer to leave with them. He afterwards worked for Dake, and says he will swear to it any time!

154 Q. Who told you that liquor was furnished by Dake?

A. The engineers; the engineer, I might say Smith.

155 Q. What Smith?

A. I forget his name. There are two of them, brothers. His first name———

156 Q. Is it Wesley Smith?

A. Wesley? Yes, sir.

157 Q. The one that testified here, or the other one?

A. Yes, sir; Wesley Smith told me, that his brother informed him, that some of Dake's men, that one of Mr. Dake's men, came up to my bakery on State st., and induced him showing him "greenbacks,"—plenty of money—induced him to leave his work, and got the men to go out into a grocery, near by, and got them drunk.

837 158 Q. What was the name of Dake's man?

A. I can't give it now, sir.

159 Q. Did you hear it?

A. I did hear; yes, sir.

160 Q. Is that all you know about Dake's furnishing money to make them drunk?

A. No, sir.

161 Q. What else do you know?

A. Mr. Mayhew was then acting as foreman, I think.

162 Q. For whom?

A. For me. He stated that the reason he couldn't furnish me with bread that night, on the next morning for my drivers, was that Dake's man came up and got Smith, the engineer, to leave with them, and decoyed the men all away and got them drunk, except himself and his boy.

163 Q. Was that all the story?

A. There is more to it.

164 Q. Tell it all.

A. I had the same statement from some of my drivers and the men, or the parties, that lived in the house.

838 On reading over the above deposition to the witness, he, having examined more at length the matters therein, made the following corrections and explanations:

"Instead of making that answer to the 53 Q. that I did, I should

have said, that we made our estimate from the testimony of the engineers and the foreman that worked the ovens."

"As an answer to question 55, I would say that I cannot furnish these bills, as we used a good deal of coke. Besides, the bills for coal and coke were from various parties, and some of the coke and coal was paid for with and some without the bills. The coke, particularly, was paid for without any bills, but simply on ticket presented. Therefore I can't furnish an exhibit showing exactly the accurate amount, as the whole thing is so much mixed up.

O. KENDALL.

Subscribed and sworn to before me, this fifth day of October, A. D. 1866.

J. T. ELY,
U. S. Com.

EXHIBIT I.

839 *Expenses in the manufacture of aerated bread.*

From April 20th to July 1st, 1865, (61 days.)

1098 bbls. flour	*a* $8 52		9,354 96
Wages of men			1,040 33
Oil of vitriol and marble dust, per bbl	1 02½		1,125 46
Hard coal, 61 days, (1 ton p. day)	14 75		899 75
Soft do 61 do 1 do do	8 50		518 50
			$12,938 99
Sales of 219,600 loaves	*a* 7½	$16,470 00	
Less 12 p. c. for delivering		1,976 40	14,493 60
Profit			$1,554 61

From July 1st to October 1st, 1865, (78 days.)

858 bbls. flour	*a* $9 23		7,919 34
Wages of men			1,612 50
Oil of vitriol and marble dust, per bbl.	1 02½		879 45
Hard coal, 78 days, (1 ton p. day)	13 00		1,014 00
Soft do 78 do 1 do do	8 00		624 00
			$12,049 29
Sales of 171,600 loaves	*a* 7½	$12,870 00	
Less 12 p. c. for delivering		1,544 40	11,325 60
Loss			$723 69

840 From October 1st to December 12th, 1865, (63 days.)

441 bbls. flour ..... *a* $10 75		4,740 75
Wages of men		1,074 14
Oil of vitriol and marble dust, p. bbl	1 02½	452 02
Hard coal, 63 days, (1 ton p. day)	20 00	1,260 00
Soft do 63 do 1 do do	8 00	504 00
		$8,030 91
Sales of 88,200 loaves ..... *a* 7½	$6,615 00	
Less 12 p. c. for delivering	793 80	5,821 20
Loss		$2,209 91

From December 26th, 1855, to March 5th, 1866, (59 days.)

295 bbls. flour ..... *a* 10 50		3,097 50
Wages of men		593 19
Oil of vitriol and marble dust, p. bbll	1 02½	302 37
Hard coal, 59 days, (½ ton p. day.) 29½ tons ..	20 00	590 00
Soft do 59 do ½ do do do ..	8 00	236 00
		$4,819 06
Sales of 59,000 loaves ..... *a* 7½	$4,425 00	
Less 12 p. c	531 00	$3,894 00
Loss		$925 06

July 1st to Oct. 1st	$723 69	
Oct. 1st to Decem. 12th	2,209 71	
Dec. 28th to March 5th	925 06	
	$3,858 46	
Ap'l 1st to July 1st, 1865	1,554 61	
Loss		$2,303 85

841 The foregoing does not include loss by waste, which would be at least four p. cent. on the gross amount. Neither does it include use of apparatus, wear and tear of machinery and belting, gas-light, salt, rent of premises, and other incidental expenses.

The same amount of flour made into bread in the ordinary way would have realized a profit of one dollar and seventy cents p. barrel. (Twenty-six hundred and ninety-two barrels.)

EXHIBIT 2.

842	1865.	
	April 21. 2 carboys, 300 oil vitriol, 161, 158—319, *a* 6c	$25 14
April	2 bbls. marble dust, 5 00	10 00
	25. 2 carboys, 300 oil vitriol, 159, 160—319, *a* 6 c	25 14
	2 bbls. marble dust, 5 00	10 00
	28. 2 carboys, 300 oil vitriol, 163,167—330, *a* 6 c	25 80
	2 bbls marble dust, 5 00	10 00
	31. 1 carboy, 300, oil vitriol, 161, *a* 6	12 66
	1 bbl. marble dust	5 00
May	5. 2 Do. do. do., 5,00	10 00
	6. 2 Do. do. do., 5,00	10 00
	2 carboys, 300, oil vitriol, 166, 152—318, 6 c	25 08
	9. 2 Do. 300 do. 165, 157—322, 6 c	25 32
	10. 2 bbls. marble dust, 5 00	10 00
	13. 2 Do. do. 5 00	10 00
	2 carboys, 300, oil vitriol, 156, 174—330, 5½	24 15
	16. 2 Do. 300, do. 173, 172—345, 5½	24 98
	2 bbls. marble dust, 5 00	10 00
	19. 2 Do. do. 4 50	9 00
	2 carboys, 300, oil vitriol, 157, 163—320, 5½	23 60
	22. 1 Do. 300 do. 166, 5½	12 13
	1 bbl. marble dust	4 50
	23. 2 carboys, 300, oil vitriol, 165, 155—320, 5½	23 60
	2 bbls. marble dust, 4 50	9 00
	26. 2 Do. do. 4 50	9 00
	2 carboys, 300, oil vitriol, 308, 5½	22 94
	27. 1 Do. 300, do. 162, 5½	11 91
	29. 2 bbls. marble dust, 4 50	9 00
843	2 carboys, 300, oil vitriol, 166, 183—349, 5½	25 19
	31. 2 bbls. marble dust, 4 50	9 00
June	1. 2 carboys, 300, oil vitriol, 364,5½	26 02
	2 bbls. marble dust, 4 50	9 00
	13. 2 Do. do. 4 50	9 00
June	13. 2 carboys, 300, oil vitriol, 303, 5½	22 67
	1 Do. 300, " 162, 5½	11 91
	1 bbl. marble dust	4 50
	14. 2 carboys, 300, oil vitriol, 336, 5½	24 48
	2 bbls. marble dust, 4 50	9 00
	16. 2 carboys. 300, oil vitriol, 161, 181—382, 5½	24 81
	2 bbls. marble dust, 4 50	9 00
	17. 2 carboys, 300, oil vitriol, 315, 5½	23 32
	23. 2 Do. 300, do., 256, 5½	20 08
	2 bbls. marble dust, 4 50	9 00
	26. 2 Do. do. 4 50.	9 00
	28. 2 Do. do. 4 50	9 00
	29. 40 carboys, 315, oil vitriol. 6,515 *a* 4 c., 386 60; freight, 38 77	425 37
July	1. 4 bbls. marble dust, 4 50	18 00
	8. 2 Do. do. 4 50	9 00
	12. 2 Do. do. 4 50	9 00
	17. 2 Do. do. 4 50	9 00
	20. 4 Do. do. 4 50	18 00
	26. 2 Do. do. 4 50	9 00
844	Augt. 1. 3 254-380 bbls. marble dust, J. H. R. A Co, 4 75	16 55
	4. 2 215-380 Do. do. do. 4 75	11 58
Augt.	8. 1 102-380 bbls. marble dust, J. H. R. & Co., 4 75	5 72
	1 Do. do. Stearns & Co	5 00
	10. 8 carboys oil vitriol	88 65
	11. 8 bbls. marble dust	34 00
	26. 2 Do. do.	8 50
	30. 2 Do. do.	8 50
Septr.	1. 2 Do. do.	7 00
	Forward	$1,346 80

1865.		Forward	1,346 80
	2. 5 Do.	do. Stearns & Co	25 00
	5. 6 carboys, oil vitriol, Smith & Droyer.		62 15
	8. 5 bbls. marble dust, 4 25		21 25
	11. 6 carboys, oil vitriol		60 95
	14. 6 bbls. marble dust		26 00
Septr.	15. 12 bbls. marble dust		52 00
	16. 4 carboys, oil vitriol.		40 75
	20. 6 Do. do		61 85
	27. 1 Do. 300, do., J. H. R. & Co., 155, 5½		11 48
	1 Do. do., S & D		10 00
	28. 1 Do. 300, do., J. H. R. & Co., 175, 5½		12 63
	29. 15 Do. do., S & D		157 05
Octr.	4. 15 bbls. marble dust		65 25
	9. 2 carboys oil vitriol		21 25
	18. 2 Do., 300, do., J. H. R. & Co., 342, 6½		26 93
	21. 2 Do., 300, do. do, 310, 6½		26 15
	23. 2 Do., 300, do. do., 325, 6½		27 78
	25. 2 Do., 300, do. do., 343, 6½		28 30
	2 bbls. marble dust, 5 00		10 00
845	28. 1 carboy, 300, oil vitriol, J. H. R & Co., 177, 6½		14 50
	1 bbl. marble dust		5 00
Octr.	31. 3 carboys, 300, oil vitriol, J. H. R. & Co., 502, 6½		41 63
Nov.	3. 2 Do. do. do. 339, 6½		28 03
	9. 3 Do. do. do. 526, 6½		43 19
	3 bbls. marble dust, S. & D., 4 25		12 75
	16. 2 carboys, oil vitriol, W. D. H. & Co.		25 66
	21. 3 carboys, 300, do. do. 492, 6 c		38 52
	22. 3 bbls. marble dust, 6 50		19 50
	27. 3 carboys, oil vitriol, 497, 8 c		48 76
Decr.	2. 2 bbls. marble dust		14 00
	6. 1 bbl. do.		4 38
	9. 2 carboys, oil vitrlol, 318, 8 c		31 44
	1 bbl. marble dust		4 38
	23. 1 do do		4 38
	2 carboys, oil vitriol, 314, 8½		32 69
	26. 2 bbls. marble dust		8 75
	Amt. used of invoice of oil vitriol, purchased of E. Graselli, Cincinnati		194 23
	30. 2 bbls. marble dust		8 75
1866.			
Jany.	3. 1 carboy, oil vitriol, 160, 6 c		12 60
	4. 2 bbl. marble dust.		8 75
	11. 3 do do		13 13
	19. 4 do do		17 50
Feby.	5. 3 do do		13 13
	17. 3 do do		13 13
March	1. 2 do do		8 75
			$2,760 20

846

2692)276010(102½
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There was on hand March 5th, 1866, 23 carboys oil of vitriol, and 2 barrels marble dust which were not included in the above amount.

Orrin Kendall's deposition. Commissioner's fees, $19 00. Rec'd above am't from def'ts solicitor.

J. T. ELY,
U. S. Com.

847 This was all the evidence.

THOMAS DRUMMOND.

Endorsed: Filed Nov. 30th, 1867. W. H. Bradley, C'lk.

848 And on this day, to wit: the 7th day of December, A. D. 1867, come the said defendant, Orrin Kendall, and filed in the office of the clerk of said court his bond, on appeal to the Supreme Court, which bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents, that we, Orrin Kendall, as principal, and Edward K. Kendall and James L. Kendall, as sureties, are held and firmly bound unto Joseph M. Dake, of Chicago, in Cook county, Illinois, in the penal sum of six thousand dollars ($6,000) to be paid to the said Dake, his executors or administrators. To which payment well and truly to be made, we bind ourselves, and each of us jointly and severally, and our, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 30th day of November, A. D. 1867.

Whereas, Orrin Kendall above named, hath prayed an appeal to the Supreme Court of the United States, to reverse a decree rendered by the Circuit Court of the United States for the 8th circuit and northern district of Illinois, on the 30th day of November, A. D. 1867, in a certain cause on the equity side of said court, wherein Joseph M. Dake was complainant, and Orrin Kendall was defendant, in favor of said complainant. Now, therefore, the condition of this obligation is such that if the above-named Orrin Kendall shall prosecute his said appeal to effect, and answer all damages and

849 costs, if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

ORRIN KENDALL. [SEAL.]
EDWARD K KENDALL. [SEAL.]
JAMES S. KENDALL. [SEAL.]

Sealed and delivered in presence of—

Approved:

THOMAS DRUMMOND.

Endorsed: Filed Decbr. 7th, 1867. Wm. H. Bradley, Cl'k.

850 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the Circuit Court of the United States for said northern district of Illinois, do hereby certify the foregoing transcript, embracing eight hundred forty-nine pages, to be a true, full, and perfect copy from the record of all the proceedings which have been had in said court in the cause of Joseph M. Dake, complainant, against Orrin Kendall, defendant, as the original of the same now remains in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Chicago, in said northern district, this twenty-third day of December, A. D., 1867.

[SEAL.] WM. H. BRADLEY, *Clerk*.

[5 ct. rev. stamp.]